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Report of the Special Rapporteur on the situation of human rights in Cambodia, Rhona Smith

Summary

Cambodia and its people have been served by special procedure mandate holders since 1993. In September 2014, the Human Rights Council considered the final report of the previous Special Rapporteur, Surya P. Subedi. The appointment of the present Special Rapporteur was made by the Council in March 2015 and came into effect on 1 May 2015. An initial visit scheduled for May 2015 had to be postponed for logistical reasons and cannot be rescheduled before the Council meets in September 2015. As the present report was finalized on 8 June 2015, in order to meet the reporting schedule for the thirtieth session of the Council, it reflects progress over the past year within the tenure of the former Special Rapporteur only.

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I. Introduction

1. The present report, the first to be submitted by the newly appointed Special Rapporteur on the situation of human rights in Cambodia, was prepared pursuant to Human Rights Council resolution 24/29. The Special Rapporteur was appointed in March 2015, took up her appointment on 1 May 2015 and, owing to logistical difficulties, was unable to undertake the scheduled initial visit before the present report was submitted.

2. The outgoing Special Rapporteur, Surya P. Subedi, undertook a visit to Cambodia from 17 to 25 January 2015, during which he met with a wide range of stakeholders, including representatives of the Government, the opposition political parties, civil society organizations and citizens. The details of his visit and his views thereon are contained in his final press statement.[1]

3. During the reporting period, several periodic reports submitted by Cambodia were considered by United Nations treaty bodies. The Human Rights Committee considered the second periodic report of the country (CCPR/C/KHM/2) and issued its concluding observations (CCPR/C/KHM/CO/2). The Committee on the Rights of the Child considered the progress Cambodia had made in implementing the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict and issued its concluding observations thereon (CRC/C/OPAC/KHM/CO/1). It also considered the progress Cambodia had made in implementing the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and issued its concluding observations thereon (CRC/C/OPSC/KHM/CO/1).

4. The initial reports of Cambodia on the implementation of the Convention on the Rights of Persons with Disabilities and the International Convention for the Protection of All Persons from Enforced Disappearance are due in 2015. The periodic reports of Cambodia on the implementation of the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination are overdue. In preparation for the third periodic report of Cambodia on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Committee against Torture published its list of issues prior to reporting (CAT/C/KHM/Q/3) and is awaiting the State's response.

5. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is the only one of the nine core human rights treaties that Cambodia has signed but not yet ratified. However, during the second cycle of the universal periodic review, Cambodia accepted recommendations to consider ratification of that instrument.[2]

II. Communications

6. With respect to individual communication procedures, Cambodia has ratified the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women. However, no communications were received under that procedure during the reporting period.

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[1] See http://cambodia.ohchr.org/WebDOCs/DocNewsIndex/2015/012015/Press_statement_23-Jan-2015_Eng.pdf.

[2] See A/HRC/26/16, paras. 118.6-118.8.

7. According to the Office of the United Nations High Commissioner for Human Rights, during the reporting period, the former Special Rapporteur addressed a number of communications to the Government on the following cases of concern.

8. On 22 August 2014, the Special Rapporteur on the situation of human rights in Cambodia was joined by the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Working Group on Arbitrary Detention, the Special Rapporteur on the rights to freedom of peaceful assembly and of association, and the Special Rapporteur on the situation of human rights defenders in sending a letter of allegation to the Government of Cambodia. The letter drew attention to the land appropriation, denial of justice, judicial harassment, intimidation and frequent attacks on residents of Lor Peang and Boeung Kak villages in Ta Ches commune. Over 400 hectares issued on title to local company KDC International in 2007 allegedly overlap or encroach on some 200 hectares of villagers' land. On 23 June 2014, 22 families filed a complaint with the Phnom Penh Municipal Court claiming they were threatened or harassed into accepting inadequate compensation. In early July 2014, KDC International began constructing a concrete wall around the contested land. In August, a group of community members marched to Phnom Penh to protest the arrest of two other community members, and were allegedly dispersed violently by 300 to 400 police officers armed with shields, electric clubs and wooden sticks. The allegation letter drew attention to a previous joint allegation letter sent in 2011 by the Special Rapporteur on the situation of human rights in Cambodia, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and the Special Rapporteur on the situation of human rights defenders.[3] That previous letter outlined defamation concerns, and the current letter expressed regret that no response had been received.

9. On 30 April 2015, a joint letter of allegation was sent by the Special Rapporteur on the situation of human rights in Cambodia and the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context. The letter concerned the Bunong indigenous community and addressed the appropriation of land and denial of access to justice and the right to titling of communal land. The Binh Phuoc Rubber Company had been issued an economic land concession in October 2011 that covered land occupied by Bunong indigenous families. Approximately 211 families, or about 1,000 people, including children, were affected. Community members claimed they had not been consulted prior to the issuance of the economic land concession, in spite of legal requirements to do so. In early December 2014, representatives of the company allegedly bulldozed property that the families used for agricultural activities and seasonal residence. At the end of March 2015, armed police allegedly accompanied representatives of the company who bulldozed forest land, community farm land and roughly 170 temporary residential structures used seasonally by community members. The Special Rapporteurs expressed concern about ensuring that claims contesting ownership to the land received fair assessment by an appropriate court or dispute resolution mechanism, and asked that until such assessment was conducted, any further clearing or development be suspended.

10. No response to either of the allegation letters was received from the Government of Cambodia during the reporting period.

11. With respect to the pending law on associations and non-governmental organizations, the Special Rapporteur on the rights to freedom of peaceful assembly and of association reiterated his call to the Government to include civil society in the drafting

[3] See A/HRC/18/51, p. 42 (case no. KHM 1/2011).

process.[4] The heads of the Office of the United Nations High Commissioner for Human Rights, the United Nations Children's Fund, the United Nations Entity for Gender Equality and the Empowerment of Women and the United Nations Population Fund in Cambodia also wrote an opinion piece encouraging further consultation and debate on this law in May 2015.[5]

III. Conclusion

12. **The former Special Rapporteur concluded his tenure with a final press release indicating his views on the evolving situation of human rights in Cambodia.[6]**

13. **The current Special Rapporteur is encouraged by and grateful for the Government's prompt issue of an invitation for the visit in May, although it was ultimately postponed. She intends to seek agreement to undertake the visit as soon as an appropriate time can be found, and looks forward to visiting Cambodia. Progress will be discussed with the Government and other stakeholders to determine the focus and format of future missions, should the Human Rights Council decide to continue the mandate.**

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[4] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15996&LangID=E#sthash.q798H53J.dpuf.

[5] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15996&LangID=E.

[6] See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15907&LangID=E.

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Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in the Central African Republic, Marie-Thérèse Keita Bocoum

Summary

This report follows two visits made by the Independent Expert and presents an overview of and major developments in the situation of human rights in the Central African Republic.

The Transitional Government has a number of significant achievements to its credit, including the organization of national consultations and the Bangui Forum, which resulted in the adoption of the Republican Pact for Peace, National Reconciliation and Reconstruction. The Bangui Forum also led to the signing of an agreement on the principles of disarmament, demobilization and reintegration and a further agreement under which the armed groups committed themselves to stop recruiting children and to release all child soldiers from their ranks.

The Transitional President also took an unprecedented step in the fight against impunity by promulgating a law establishing a Special Criminal Court competent to investigate the serious violations of human rights and international humanitarian law committed in the country since 1 January 2003, and to hear and rule in such cases.

The challenges faced by the Central African Republic include re-establishing State authority, security and administration throughout the country; restoring the rule of law and justice; reforming the security sector and implementing the disarmament, demobilization, repatriation and reintegration strategy; combating impunity; achieving reconciliation; strengthening peaceful coexistence and social cohesion; reviving the economy; combating poverty; and, finally, protecting and assisting displaced persons and refugees in their return and reintegration.

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It is in this context that the Independent Expert reports on the main allegations of human rights violations brought to her attention. These include violations of the right to life, acts of torture, inhuman and degrading treatment, arbitrary arrests, rape, racketeering and extortion, violations of the right to education, the right to health and the right to food. Intercommunal tensions in the country remain high and require the Government to take urgent measures to facilitate peaceful coexistence between the communities and prevent intercommunal violence leading to serious human rights violations.

Most of the human rights violations are committed by the armed groups that are operating more or less freely in certain areas of the country or result from shortcomings on the part of the State, which remains incapable of imposing its authority throughout the territory, preventing violations or ensuring the rule of law and the administration of justice.

Respect for the rights of the Muslim minority and the establishment of a culture of peaceful coexistence, two long-term aims of the people of the Central African Republic, must be reinforced and fostered by respect for human rights and for the principles and rules of democracy.

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Abbreviations

ECCAS	Economic Community of Central African States
EUFOR-RCA	European Union military operation in the Central African Republic
MINUSCA	United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic
OHCHR	Office of the United Nations High Commissioner for Human Rights

I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 27/28 of 3 October 2014 whereby the Council extended the mandate of the Independent Expert and asked her to submit a written report at its thirtieth session.

2. This report, which covers the period from May 2014 to the end of June 2015, is based on two visits to the Central African Republic, the first of which took place from 3 to 14 February 2015 and the second from 16 to 24 June 2015. It presents the conclusions of the Independent Expert and her recommendations to the Government of the Central African Republic and to the international community.

3. The Independent Expert would like to thank the authorities of the Central African Republic and the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA) for ensuring that her two visits took place under optimum conditions. During the missions, the Independent Expert took care to listen to all stakeholders in order to gather their views and opinions on the human rights situation and on the possible solutions to improve it. With this aim in mind, she also met with the country's most senior officials. The Independent Expert would like to express her gratitude to the Transitional Head of State, Ms. Samba-Panza, for engaging in open and fruitful discussion with her.

4. The Independent Expert also spoke with the Ministers of Foreign Affairs, Defence, Justice, Reconciliation, Social Affairs and Humanitarian Action, Territorial Administration and Tourism, as well as with senior representatives from the central and territorial administration, including the Prosecutor of Bangui.

5. She held extensive discussions with the leadership and other sections of MINUSCA, the Humanitarian Coordinator and specialized agencies of the United Nations, the force commanders of MINUSCA and Sangaris and representatives of the diplomatic corps, including the African Group of Ambassadors, representatives of the African Union and the mediator in the Central African Republic for the Economic Community of Central African States (ECCAS). She also met with representatives of the European Union, France, the Russian Federation and the United States of America.

6. In addition, she participated in talks with representatives of various civil society organizations and associations, human rights organizations, women's organizations and youth organizations. She also met with leaders of the Interfaith Peace Platform and other religious officials.

7. The Independent Expert spoke with representatives of political parties and with the key representatives of the former Séléka forces and anti-balaka groups.

8. In addition to Bangui, she visited Berbérati and Boali, in the west of the country, and Bambari and Bria in the eastern central region, as well as displaced persons' sites in Yaloké (north-west of Bangui) where she was accompanied by the Deputy Emergency Relief Coordinator, Ms. Kyung-wha Kang, and the Special Rapporteur on the Human Rights of Internally Displaced Persons, Mr. Chaloka Beyani. She also visited the displaced persons' camp in M'poko, near to Bangui airport, and the PK5 Muslim enclave in Bangui.

9. The Independent Expert would particularly like to thank the Director of the Human Rights Division of MINUSCA and his staff for their support in organizing her visits.

10. The Independent Expert also participated in two interactive dialogues with the Human Rights Council on the human rights situation in the Central African Republic at its twenty-eighth and twenty-ninth sessions. During the interactive dialogue of 30

June 2015, the chosen format allowed more in-depth discussion on the efforts being made to combat impunity in the Central African Republic, with the participation of the Deputy Special Representative of the Secretary-General and Deputy Head of MINUSCA, the Ministers of Justice and National Reconciliation of the Central African Republic, and Imam Kobine Layama, representing the Central African Republic Interfaith Peace Platform.[1]

II. General situation

A. Political context

11. The political transition that began on 18 August 2013 for an initial period of 18 months was extended on 22 December 2014 for an additional 6 months by Mr. Denis Sassou Nguesso, the mediator in the Central African Republic for the ECCAS and President of the Republic of the Congo. The current political transition provides for a constitutional referendum and presidential and legislative elections, which should mark the end of the transition and a return to constitutional order by the end of 2015.

12. On 23 January 2015, in her speech marking the first anniversary of the transition, President Samba-Panza noted that the Central African Republic was recovering slowly but surely thanks to the joint efforts of the Central African people and the international community. She stressed that security was gaining ground with the support of the international forces and that State authority was gradually being restored through the deployment of civil servants in the interior of the country.

13. The agreement on the cessation of hostilities in the Central African Republic signed on 23 July 2014 provided for, inter alia, the holding of a national forum that would pave the way for the restoration of peace and national reconciliation and the holding of free, democratic and transparent elections to enable a return to a constitutional system. The forum was to be preceded by local consultations so as to restore the relationship between the State and its citizens and to lay the foundations for a process of political dialogue.

14. These local consultations were held in January and February 2015, and the following four areas of focus were defined: (a) dialogue, truth, justice, reparation and reconciliation; (b) peace and security, disarmament, demobilization and reintegration, security sector reform and child soldiers; (c) governance and elections; and (d) economic development and assistance for victims. A total of 28 facilitation teams of 10 to 15 persons each were deployed throughout the country and in other countries hosting large numbers of refugees or residents from the Central African Republic (namely Chad, Cameroon, the Democratic Republic of the Congo, the Congo and France) in order to hear and record citizens' main concerns and expectations. About 20,000 persons were consulted, 4,370 of whom were women. In areas controlled by former Séléka fighters, armed members of that faction threatened the government delegations and facilitation teams, thereby disrupting and delaying the consultations. However, thanks to the intervention of MINUSCA, Sangaris and the European Union military operation in the Central African Republic (EUTOR RCA), consultations were successfully held in all provinces.

15. The Bangui National Forum on National Reconciliation was held from 4 to 11 May 2015. The overall objective was to provide an opportunity for nationals of the Central African Republic to reflect on the root causes of the crisis and propose ways

[1] For more information, see http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16174&LangID=E.

of addressing them. The idea was to establish a new social contract for the Central African Republic.

16. The Bangui Forum adopted the Republican Pact for Peace, National Reconciliation and Reconstruction, which reaffirms, inter alia, the need to create conditions conducive to holding a constitutional referendum and free and transparent general elections throughout the country as soon as possible, and calls for the effective establishment of the Special Criminal Court.

17. With regard to human rights and justice, the Republican Pact affirms the need to strengthen and respect the constitutional provisions on the protection of human rights and fundamental freedoms, without discrimination on the grounds of age, sex, ethnicity or religion, and to guarantee freedom of movement throughout the country. It calls for the establishment of a national human rights institution and a transitional justice mechanism, including a truth, justice, reparation and reconciliation commission.

18. The Bangui Forum also led to the signing of an agreement on the principles of disarmament, demobilization and reintegration and a further agreement under which the armed groups committed themselves to stop recruiting children and to release all child soldiers associated with their groups.

19. In a press release issued on 13 May 2015, the Independent Expert welcomed the adoption of the Republican Pact and urged all stakeholders to fulfil their commitments in order to pave the way for reconciliation and the restoration of lasting peace.

20. The constitutional review process is also under way, and a preliminary draft was adopted by the Transitional National Council on 17 February 2015. The Republican Pact includes a number of important recommendations concerning the Constitution, which should be taken into account by the Government and the Transitional National Council. The new Constitution is expected to be adopted by referendum on 4 October 2015.

21. On 22 April 2015, the Transitional National Council adopted the law on the establishment of the Special Criminal Court, which was then promulgated on 3 June. Pursuant to this law, the Court has the power to investigate any serious violations of human rights and international humanitarian law committed in the country since 1 January 2003 and to hear and rule in such cases.

22. In June, the Government announced a new electoral calendar, according to which the first round of presidential and parliamentary elections is to be held on 18 October 2015 and the second on 22 November. In preparation for the elections, voter registration will take place from 27 June to 27 July.

B. Security context

23. The overall security situation has improved since the arrival of the MINUSCA, Sangaris and EUTOR RCA forces. With regard to MINUSCA, the Security Council, in its resolution 2217 (2015), authorized the deployment of 12,870 uniformed personnel, including 2,120 police officers. Their deployment, initially in Bangui and then progressively throughout the rest of the country, was followed by the deployment of State civil servants, though on a small scale.

24. In Bangui, anti-balaka militias continued to threaten residents' safety on a regular basis. The arrest by MINUSCA of one of their leaders, Rodrigue Gaïbona (also known as Andilo), on 17 January 2015 was followed by several hostage-taking incidents in Bangui. A French humanitarian worker was kidnapped on 19 January and subsequently released on 23 January; a MINUSCA employee was briefly abducted on

20 January, and the Minister of Youth and Sports, Armel Sayo, was kidnapped on 25 January and released on 10 February.

25. About 2,000 former Séléka combatants and their families remain billeted in three military camps in Bangui, known as the Régiment de défense opérationnelle du territoire (Regiment for the operational defence of the country) (RDOT), Béal and Bataillon du soutien et des services (Support and services battalion) (BSS) camps, and they have at their disposal a large supply of war material and ammunition. However, an agreement to clear the Béal camp of its stockpile of explosives and ammunition was signed with the armed groups at the end of May.

26. Security has gradually returned to the rest of the country, thanks to increased patrolling by MINUSCA. However, there was still a very real presence of armed groups throughout the year, with anti-balaka groups controlling the western part of the country and former Séléka combatants controlling the northern and eastern areas. The country is also still under threat of action by members of other armed groups, such as the Lord's Resistance Army in the west or Révolution et Justice and the Front Démocratique du Peuple Centrafricain in the east. The Secretary-General of the United Nations has also warned about the unconfirmed presence near the border with Cameroon of members of Boko Haram who may be seeking to expand their terrorist activities into the Central African Republic.

27. Given the virtual absence of State authority in the interior of the country, armed groups continue to tax citizens illegally and profit from illegal mining activities. With support from MINUSCA, the Government has begun stationing civil servants in posts throughout the country, although only 8 out of 16 prefects have been posted thus far. The Independent Expert also noted that the judiciary and the police and gendarmerie forces still have only a limited presence or none at all in many areas, particularly in the east of the country.

28. While the outline and strategy of the disarmament, demobilization and reintegration programme were drawn up at the Bangui Forum, as at the end of June, the Government and MINUSCA were still awaiting funds for its implementation.

29. Since the Bangui Forum, there have been several security incidents involving members of armed groups, notably one in early June in which two peacekeepers were injured in an ambush reportedly carried out by the anti-balaka. These incidents highlight the lack of cohesion within the armed groups, as rogue elements continue to commit acts that violate the agreements signed by their leaders.

C. Economic context

30. The Central African Republic is one of the poorest countries in the world, with a ranking of 185 out of 187 on the Human Development Index.[2] The country has historically lacked infrastructure — a situation that results in the geographic and spatial exclusion of its people and exacerbates rural poverty.[3] In 2014, the country experienced a modest economic recovery, which is expected to continue in 2015 and 2016 thanks to the improved security situation and the holding of credible presidential and legislative elections.

31. In peacetime, the four generators of wealth are diamonds, timber, cotton and livestock. Processing industries, which were just beginning to develop before the crisis, were negatively affected but have subsequently experienced a partial recovery.

[2] United Nations Development Programme (UNDP), 2014 (see http://hdr.undp.org/en/data).

[3] The road network covers a total distance of 24,000 km, of which only 700 km are paved.

Rampant corruption is severely hindering the development of the timber and diamond industries.

32. The power wielded by armed groups poses a real obstacle to the resumption of agropastoral activities and is seriously disrupting the trade in livestock and the supply of beef. Livestock farmers are also victims of assault and extortion in some regions.[4]

33. The country's public finances are in a state of almost complete chaos, and revenue is drying up. The Government has clearly established economic recovery as a priority, with a view to promoting wealth creation and improving people's living conditions. It has taken steps to improve the social climate by ensuring that salaries and pensions are paid on a more or less regular basis in 2015.

34. The Republican Pact calls on the Government to introduce a comprehensive strategy for reconstruction and economic development that takes the most disadvantaged regions of the country into consideration, as well as a legitimate employment policy, particularly for young people, women and vulnerable population groups. Such measures will be essential as a means of providing an alternative for young people and enabling them to reintegrate into their communities. Juvenile offenders who have been handed light sentences and those who have served their sentences should also benefit from reintegration measures.

35. The decision, taken at the meeting of members of the Kimberley Process on 26 June 2015, to allow the authorities to once again export diamonds mined in the west of the country should generate new tax revenues, which are sorely needed. Measures must be taken to ensure that the country's mineral resources are soundly managed, so that henceforth the funds created by those resources will feed the State coffers rather than trafficking and corruption.

36. The international community has come to the aid of the Central African Republic since the start of the crisis, but the assistance given is not sufficient to provide effective relief.

III. Human rights situation

A. Protection of civilians: violations committed by armed groups

37. Despite the agreement on the cessation of hostilities signed on 23 July 2014, armed groups, particularly the anti-balaka and former Séléka fighters, continue to operate relatively freely throughout much of the country and commit atrocities against civilian populations. The main allegations of human rights violations brought to the attention of the Independent Expert include violations of the right to life, acts of torture, inhuman and degrading treatment, arbitrary arrest, rape, racketeering and extortion, and violations of the right to education, the right to health and the right to food. Taking advantage of the limited presence of the State, armed groups exert de facto authority and plunder the country's natural resources.

38. The conflict has exacerbated intercommunal violence. The anti-balaka and/or the former Séléka fighters continue to intimidate, threaten and attack individuals and local communities because of their alleged collaboration or affiliation with the rival armed group. These abuses have intensified during the migration of the Fulani herders and in the context of conflicts over access to land and water resources.

[4] Food and Agriculture Organization of the United Nations, "Enquête sur la transhumance apres la crise de 2013-2014 en Republique centrafricaine", p. 6. http://foodsecuritycluster.net/sites/default/files/FAO_Rapport_Transhumance_fev2015_final.pdf

39. The most serious incidents took place in Bangui from 7 to 16 October 2014 and were largely attributed to anti-balaka fighters. The clashes began on 7 October with the murder of a man suspected of being a former Séléka fighter; he was killed by an angry mob that claimed he had thrown a grenade into a crowded market area. The incident degenerated into a series of attacks and counter-attacks, in which 11 civilians were killed and another 229 injured, including members of both the Christian and the Muslim communities. The clashes also led to the displacement of more than 7,100 civilians in the greater Bangui area and the looting and burning of at least 30 homes and many shops. Humanitarian workers and their equipment were also the targets of attacks and looting. A MINUSCA convoy was ambushed on 9 October, with two soldiers killed and seven others injured.

40. In the territory under their control, the former Séléka fighters have occupied administrative buildings and exert de facto authority. Internal power struggles and a lack of cohesion and discipline have led to new clashes among factions, which have severely affected the civilian population.

41. In Bria, for example, the security situation deteriorated considerably in October as a result of heightened tensions among the various factions of former Séléka fighters. In January 2015, Bria fell under the control of former Séléka fighters belonging to the Front populaire pour la renaissance de la Centrafrique, who refused to allow the presence of any representatives of the Bangui Government or the holding of local elections in areas under their control. On 10 February, MINUSCA and Sangaris forces launched a joint operation to drive these armed groups out of all government buildings in Bria. Six former Séléka fighters were killed in the operation, several were injured and another 16 were arrested.

42. Attacks by armed groups continued in early 2015, causing many civilian casualties. On 5 and 6 January, seven civilians, including a 6-month-old baby and a 13-year-old child, were shot and killed near Ngakobo by former Séléka fighters of the Union pour la paix en Centrafrique. On 27 January, 14 civilians were killed in an attack by former Séléka fighters belonging to the Front populaire pour la renaissance de la Centrafrique near Kaga Bandoro in Nana-Grébizi prefecture. On 14 February, in the PK5 area of Bangui, four civilians suffered serious injuries when they were attacked by a former Séléka fighter, apparently in retaliation for the killing of a young Muslim man.

43. The Independent Expert was also informed of several cases in which former Séléka fighters had subjected civilians to ill-treatment and accused them of being spies working for the anti-balaka or the international forces. For example, on 11 March 2015, two men accused of having ties with the anti-balaka were illegally detained and subjected to cruel and inhuman treatment by former Séléka fighters of the Union pour la paix en Centrafrique.

44. Some Fulani groups have also allegedly committed human rights violations with support from groups of former Séléka fighters. For example, in the second week of October, armed Fulani carried out an attack on the village of Batobadja in Ouaka prefecture, killing 11 civilians. From 12 to 14 November 2014, also in Ouaka prefecture, an unknown number of armed Fulani attacked the village of Pende and killed seven people, including four children. Another attack by armed Fulani carried out on 1 December in the town of Zémio, Upper Mbomou prefecture, left 3 people dead and 2 injured, while some 40 houses were burned down and 2 shops were looted. On 3 December in Bambari, armed Fulani with ties to the Union pour la paix en Centrafrique attacked and killed 13 people and injured at least 33 civilians in retaliation for the death of one of their members. During the attack, some 33 houses were burned and looted.

45. The Independent Expert has received reports of fighting that took place in late April and early May 2015 between the anti-balaka and the Union pour la paix en Centrafrique former Séléka faction over control of Kouango sub-prefecture, as a result of which many villages were destroyed and more than 32 people were killed. MINUSCA has confirmed that 36 villages have been abandoned, 27 of them completely or partially burned, and it has established a base in the prefecture to effectively protect the population and prevent attacks and reprisals.

46. The Independent Expert has also received reports of several incidents involving security forces, including cases of ill-treatment in places of pretrial detention or during the arrest of suspected criminals. These reports include, in particular, allegations against the Centre to Combat Crime. She has also been informed of cases in which national security forces were reportedly reluctant to take action against human rights violators, particularly when the latter were anti-balaka.

B. Minority rights

47. Before the conflict, the Muslim minority represented about 15 per cent of the population,[1] but most of the various Muslim communities in the west of the country have either left or become isolated in enclaves.[2] In response to systematic attacks by anti-balaka groups on civilians identified as receiving or having received support from the Séléka forces, or from the Fulani, or from Muslims in general, they gathered together and were then forced to leave.

48. Religious buildings and schools have been systematically attacked. All mosques between Bangui and Boali have been attacked and totally or partially destroyed, including most of the mosques in Bossangoa, Bossembélé and Bouar. Most of the mosques still standing are serving as shelters for civilians under attack; this includes the central mosques in Boda, Bangui, Berbérati and PK12.[3] Of the 23 mosques in Bangui, only 4 have escaped attack and destruction.

49. A year after the signing of the agreement on the cessation of hostilities, the situation remains worrying, and the Independent Expert has observed only very limited trade and return to peaceful coexistence between the religious communities. In Bangui, Muslims living in the PK5 area cannot venture beyond their neighbourhood, and most have not been able to find new jobs or any way of attending university or school. Other citizens who have taken refuge in the PK5 area are unable to return to their neighbourhoods of origin. In Berbérati, Muslims and Christians live on opposite sides of the river, and the bridge is crossed only by the staff of the United Nations and non-governmental organizations (NGOs). In Boda, Muslim and Christian residents no longer mix with each other at all.

50. The issue of the rights of Muslim minorities was discussed during the Bangui Forum, and the Independent Expert took note of the decision to officially celebrate Muslim holidays in the Central African Republic. This decision was welcomed by the Muslim community as a new framework for social cohesion. At the time of the writing of this report, however, no formal decision to that effect had yet been promulgated or adopted. Protecting the Muslim minority's identity is crucial for peace and social cohesion.

[1] www.cia.gov/library/publications/the-world-factbook/geos/ct.html

[2] The seven enclaves are Yaloke, Carnot, Berberati, Bouar, Boda, Dekoa and the PK5 area in Bangui.

[3] The International Federation for Human Rights and the Ligue centrafricaine des droits de l'homme, "Central African Republic: They Must All Leave or Die" Investigative report, June 2014, p. 47 (www.fidh.org/IMG/pdf/rapport_rca_2014-fr-ld.pdf).

C. Refugees and internally displaced persons

51. Some 900,000 people have been displaced by the violence since the crisis in the Central African Republic began in December 2013. They have sought refuge in Cameroon, Chad, the Congo and the Democratic Republic of the Congo. About 460,000 people are still today living as refugees in neighbouring countries (of whom about 220,000 have become refugees since December 2013), and some 436,000 persons have been internally displaced. Humanitarian organizations estimate that more than half of the population, that is, 2.7 million people, require emergency humanitarian aid.[8]

52. The issue of internally displaced persons in the Yaloké enclave has come to the notice of the Independent Expert, who visited the area during her mission in February 2015. She found this enclave particularly worrying because of the very harsh living conditions there. In addition, between April and December 2014, about 40 members of the Fulani community who had taken refuge there died of disease and malnutrition. During her visit to Yaloké,[9] the Independent Expert noted that internally displaced persons had received increased attention and support in recent weeks and that their living conditions had improved. However, in the face of the authorities' reluctance to allow the Fulani to leave, the Independent Expert emphasized that the rights of internally displaced persons, including their right to freedom of movement, must be fully respected.

53. The Independent Expert stressed to all the persons she met with, including the highest State authorities, that, under international law, internally displaced persons were entitled to the same rights and freedoms as the rest of the population. The legal principles governing internally displaced persons — notably the freedom to leave or stay, the freedom of residence and the right of return — should apply at all times.

54. Following the joint visit, the Government relaxed its position and, as a first step, allowed the departure of some internally displaced persons on the ground of family reunification. Between 31 March and 4 April 2015, about 130 internally displaced Fulani left the Yaloké enclave on commercial trucks headed for Cameroon. The Office of the United Nations High Commissioner for Refugees (UNHCR) and MINUSCA helped to reunite 20 refugee families in Cameroon. As at mid-April, an estimated 330 displaced Fulani were still living in the Yaloké enclave.

55. The Central African Republic also plays host to Congolese refugees from the north-eastern part of the Democratic Republic of the Congo who have fled the violence perpetrated by the Lord's Resistance Army. There are about 3,400 Congolese refugees living in the Zemio refugee camp. Since the arrest of a senior Lord's Resistance Army commander in January 2015, the rebels belonging to that movement have intensified their attacks on the villages near the border with the Democratic Republic of the Congo. According to an NGO report, the Lord's Resistance Army carried out some 25 kidnappings in February 2015 in villages near Zemio.[10]

D. Violence connected with accusations of witchcraft

56. The Independent Expert continues to receive credible reports of numerous cases in which persons accused of witchcraft have been detained, tortured or killed by

[8] www.unocha.org/car.

[9] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15572&LangID=E.

[10] More than 180,000 people remain displaced in areas affected by the Lord's Resistance Army in the Central African Republic and the Democratic Republic of the Congo, and more than 30,000 people have fled the violence to neighbouring countries (www.unhcr.org/551551499.html).

individuals or members of armed groups, particularly in the west of the country. These accusations of witchcraft are usually brought against members of the most vulnerable population groups, including women, the elderly, children and persons with disabilities. Persons with albinism are not immune either.

57. Persons suspected of witchcraft have also reportedly been victims of acts of mob justice, which are often carried out by anti-balaka militias with the complicity of the local authorities. The situation of conflict, instability and intercommunal hostility and the absence of State authority encourage the emergence of such practices.

58. During her visit in February 2015, the Independent Expert received damning information about cases of persons accused of witchcraft, particularly elderly persons and children, and especially in Bouar, being tortured and murdered. They have included individuals being horrifically burned and allegedly being buried alive. The Bouar police and gendarmerie said that they were powerless against the armed anti-balaka fighters.

59. The Independent Expert also noted that a number of women have been imprisoned because they have been accused of witchcraft, often without evidence. This was particularly the case in the Berbérati prison, where a woman who had been detained on the basis of allegations of witchcraft was finally released following the Independent Expert's visit and follow-up monitoring by the Human Rights Division of MINUSCA.

60. Under the pretence of witchcraft accusations, such practices are perpetrated by armed individuals seeking to extort money from villagers. This is unacceptable and constitutes a violation of national and international law, and the Independent Expert has alerted the authorities to these practices. She has asked that they arrest those responsible without further delay, publicly condemn these heinous crimes, and launch an awareness-raising campaign to deter such acts. Although a few perpetrators of such violence have been arrested, the Independent Expert noted that the Central African authorities have thus far not responded appropriately and effectively to put an end to mob justice.

61. Articles 149 and 150 of chapter XI of the country's Criminal Code of 6 January 2010 criminalize such practices and establish penalties ranging from fines to life imprisonment in cases where such acts result in death. When the Expert discussed this matter with the authorities, the response provided was that witchcraft had been criminalized in order to protect persons accused of witchcraft from mob justice and to enable them to have a fair trial.

62. This argument is valid only if the State institutions, security forces and, in particular, the judiciary function properly and implement the law. The security forces should severely punish any armed militias that misuse the law to justify taking the place of the courts and dispensing justice themselves.

63. MINUSCA has established a working group on charlatanism and witchcraft that brings together United Nations bodies, NGOs and government officials to begin reflecting on the root causes of violence connected with witchcraft and on ways of addressing them. The actions considered include conducting awareness-raising campaigns, training local and international stakeholders, reviewing and amending existing legal instruments, and identifying and arresting the perpetrators of related offences.

E. Women and children

64. In his report of 23 March 2015 on conflict-related sexual violence (S/2015/203), the Secretary-General stated that, in 2014, a total of 2,527 cases of conflict-related sexual violence had been reported in the Central African Republic. This violence included rape perpetrated to terrorize civilians, with many victims being assaulted in their homes or while sheltering in fields or in the bush. According to the report, the alleged perpetrators are associated with armed herders from Fulani Mbarara communities or members of the former Séléka anti-balaka, Révolution et justice or Front démocratique du peuple centrafricain armed groups (para. 14).

65. The report notes that the number of cases of sexual violence seems to have declined since the end of open hostilities, especially in response to the presence of international troops, namely the MINUSCA, Sangaris and EUTOR forces. However, such violence still persists in the most remote parts of the country, such as mining and border areas. Moreover, the absence of State services, such as health-care and social services, means that victims do not have access to proper care, including post-exposure prophylaxis to prevent the transmission of HIV (para. 15).

66. The Independent Expert encourages the transitional Government to adopt, without delay, the decree on establishing a joint rapid response unit to combat sexual violence.

67. The Independent Expert is also alarmed by reports of Fulani civilians — mostly women and girls — being kept as slaves, and in some cases as sex slaves, by anti-balaka fighters. Some 40 Fulani were reportedly held hostage for about 14 months.[11] In April 2015, MINUSCA intervened and freed about 30 of the hostages. The Expert urges the anti-balaka to release all the remaining hostages and urges the authorities to bring those responsible to justice.

68. Even before the crisis, the Central African Republic had the third highest maternal mortality rate in the world. One in three women never sees a health-care provider during her pregnancy, and one in two gives birth without any qualified birth attendants. Though there are no recent statistics available, organizations believe that the situation has worsened since the start of the crisis.

69. Regarding the situation of children, the humanitarian community estimates that more than 32,000 children in the Central African Republic will suffer from severe malnutrition and 78,000 from moderate malnutrition in 2015.

70. The demobilization of child soldiers, which had already begun in 2014, saw significant progress in May 2015 following the Bangui Forum and the agreement signed by 10 armed groups on laying down their arms, renouncing armed struggle as a means of imposing political demands, and releasing the children among their ranks. In 2014, a total of 2,807 children were removed from armed groups in the Central African Republic, including 2,374 from anti-balaka groups and 460 from the former Séléka factions. On 14 May 2015, 357 children were released in Bambari by anti-balaka militia and former Séléka fighters. The United Nations Children's Fund (UNICEF) and its partners have established family reunification programmes, psychological counselling and community reintegration programmes.

71. Save the Children recently published a study[12] showing that nearly two thirds of school-age children suffer from post-traumatic stress disorder as a result of the

[11] www.hrw.org/news/2015/04/22/central-african-republic-muslims-held-captive-raped.

[12] Save the Children, *Évaluation des besoins psychologiques des enfants d'âge scolaire dans les localités de Bangui et de la Ouaka, République centrafricaine, mars 2015* (Psychological needs assessment of school-age children in the towns of Bangui and Ouaka, Central African Republic).

violence they witnessed or experienced during the two years of conflict. The study reports that more than 60 per cent of children in the Central African Republic have witnessed or have been subjected to acts of extreme violence since March 2013.

72. This situation is cause for serious concern about the country's future. There is an urgent need to invest in the strategy for lasting peace and reconciliation in order to enable these children to rebuild their lives in peace.

F. Economic and social rights

73. The rights to education, health and food remain a major concern in the Central African Republic. Available information indicates that 693 schools were affected during the conflict, and 351 public schools across the country were looted or occupied by armed groups or civilians, damaged by various types of explosives or directly attacked. A further 342 private schools have also been affected in a similar manner. Numerous schools remain closed and many pupils have not yet returned to their studies.

74. Already fragile before the crisis, the health-care system has been shattered. In some regions, more than 75 per cent of health-care centres are unable to provide the most basic services, such as nutritional support, prenatal check-ups or treatment against infections. Most health-care centres are short of medicines as a result of looting by armed groups. Statistics for the Central African Republic indicate an average life expectancy of 49.5 years in 2013. In response to the crisis, the Government has undertaken to implement a policy of free health-care services with the support of partners such as the World Health Organization.

75. The Independent Expert was alerted to the situation of persons with disabilities, in particular the fact that they were often left behind during the conflict, given their greater difficulties in travelling. When they could not reach sites for internally displaced persons, they were often left without food, housing or appropriate medical support. Human Rights Watch[11] found that at least 96 persons with disabilities had been abandoned or were unable to escape and 11 had been killed in Bangui, Boali, Yaloké and Bossemptélé. The figure is likely an underestimate. Without mobility assistance, many persons with disabilities are forced to move around by crawling and thus are at risk of life-threatening infections.

G. Violations committed by international forces

76. Several allegations of serious human rights violations committed by international and MINUSCA forces have been reported in recent months. Following revelations by the international press concerning allegations of sexual abuse of children by French soldiers of the Sangaris force in Bangui, MINUSCA disclosed other cases of inappropriate use of force and sexual abuse by some of its elements.

77. France announced in a statement at the highest level that it had opened a judicial inquiry to shed light on the allegations concerning 14 French soldiers suspected of sexually abusing children between December 2013 and May-June 2014. The Independent Expert hopes that the results of the inquiry will be made known soon. She has stressed the importance of taking all measures necessary to protect children against violence and abuse, especially those who are vulnerable, as in the M'poko camp for internally displaced persons, for example, which she has visited. When

March 2015).

[11] Human Rights Watch, "Central African Republic: People With Disabilities Left Behind", April 2015 (www.hrw.org/news/2015/04/28/central-african-republic-people-disabilities-left-behind).

violations are reported, the authorities must protect victims against further harm, prosecute the alleged perpetrators and provide reparations.

78. On 4 June, MINUSCA issued a statement according to which a member of its forces deployed in the east of the country had been implicated in allegations of exploiting and sexually abusing a young girl. The statement reports that MINUSCA took immediate measures to protect the victim and provide appropriate care. The statement also indicates that the United Nations requested that the Government of the troop-contributing country concerned open an investigation as soon as possible.

79. On 5 June, the Office of the United Nations High Commissioner for Human Rights (OHCHR) issued a statement [14] regretting the lack of progress in the investigation of allegations of enforced disappearance, torture and extrajudicial killings of at least 11 people, including 5 women and 1 child, concerning the contingent of the Congo of the African-led International Support Mission to the Central African Republic (MISCA) [15] in Boali, a small town about 80 kilometres north of Bangui. OHCHR asked the competent authorities, including the African Union and the Governments of the Central African Republic and the Republic of the Congo, to carry out without further delay an impartial, effective and transparent investigation in order to clarify the fate of the persons concerned, bring those responsible to justice and provide reparation to the victims.

80. On 10 June 2015, MINUSCA issued a statement concerning the excessive use of force by peacekeepers deployed in the west of the country. According to the statement, United Nations soldiers allegedly beat four individuals suspected of criminal activities and arrested them at the request of local authorities, resulting in the death of two of the individuals and severe injuries to a third.

81. The Independent Expert welcomes the establishment by the Secretary-General of the United Nations of a panel of experts to conduct an independent external review to determine how the United Nations system followed up on those allegations. She is still concerned about the lack of diligence shown by the authorities involved in following up on these serious allegations of human rights violations, which are absolutely prejudicial to the protection of vulnerable persons, and calls for faster action to prevent abuses and, in cases where violations have been committed, hold the perpetrators responsible and ensure that the victims are protected.

IV. Combating impunity

82. Significant strides were made in late 2014 and early 2015 in the fight against impunity, with the arrest of three important leaders of rebel groups. With the arrest and transfer of Baba Ladé to Chad in December 2014, Dominic Ongwen to the International Criminal Court in January 2015 and Rodrigue Gaïbona, also known as Andilo, who was detained on 17 January 2015, the transitional authorities have sent strong signals of their willingness to combat impunity.

83. However, many challenges remain, particularly relating to the insufficient staffing and resources of the police and gendarmerie, criminal police and the judiciary, and the inadequate number of prisons. In addition, victims are reluctant to file complaints with the police in situations where complainants are not of the same religious or ethnic group as the law enforcement personnel.

[14] www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16043&LangID=E.

[15] MISCA was deployed in December 2013 in conjunction with Operation Sangaris. On 15 September 2014, at the end of the mandate of MISCA, the mandate of the Force was transferred to the United Nations under the name MINUSCA.

84. As a temporary emergency measure, MINUSCA has supported the authorities in apprehending nearly 383 people since the beginning of its mandate in September 2014. Most are still in investigative detention pending trial. The Independent Expert was also informed that criminal hearings had resumed on 29 June 2015, after more than five years without any trials taking place. Nearly 60 cases will be heard by the Court.

85. Justice and the fight against impunity were at the heart of the demands made during the popular consultations and the Bangui Forum. The Republican Pact called for the introduction of a constitutional clause prohibiting any possibility of amnesty for crimes against humanity, war crimes and crimes of genocide committed in the country. It also stressed the importance of effectively establishing the Special Criminal Court, with the assistance of the international community, as well as ensuring technical and operational capacity-building of the local courts and setting up mechanisms for the protection of judges, witnesses and victims.

A. Special Criminal Court

86. Following the signing of a memorandum of intent by the transitional authorities and MINUSCA in August 2014, progress was made on the authorities' initiative to create a special criminal court within the national judicial system. A bill was approved by the Council of Ministers and submitted to the National Transitional Council on 6 February 2015.

87. The United Nations and other partners provided the authorities with technical support for the development of the bill. This resulted in substantial improvements, including the abolition of the death penalty as the maximum punishment and the provision that international judges should form the majority at the appeals level.

88. On 22 April 2015, the National Transitional Council adopted the Act creating the Special Criminal Court, which was promulgated on 3 June by the transitional President. The Court is composed of 21 judges: 10 international and 11 national. The Special Prosecutor is an international judge, who is assisted by a national Deputy Prosecutor. The national and international members of the Court shall be persons of high moral character who exhibit impartiality and integrity and possess the qualifications required in their respective countries for appointment to the highest judicial offices. International members are nominated by MINUSCA and appointed by the authority assuming the duties of Chair of the Supreme Council of Justice.

89. The Special Criminal Court is competent to investigate serious violations of human rights and international humanitarian law committed in the territory of the Central African Republic since 1 January 2003, and to hear and rule in such cases, including in respect of the crime of genocide, crimes against humanity and war crimes. Its jurisdiction is complementary to that of the International Criminal Court, which has been investigating the situation in the Central African Republic since May 2014. The lifespan of the Special Criminal Court is five years, renewable if necessary (art. 70).

90. The Independent Expert welcomed the adoption of the Act, which is a decisive step in the fight against impunity. In particular, she is pleased to note that it sets out in its article 56 that it applies to everyone equally, without any distinction based on official capacity. This implies that it does not recognize immunity for representatives of the State.

91. It is crucial that the Special Criminal Court be set up quickly so that it can begin investigations. The Court can be established only with the financial support of the international community. It is also important that the international community

continue to support the ordinary criminal justice system, as the courts of the Central African Republic must be capable of trying persons accused of offences that do not meet the definition of crimes covered by the Special Criminal Court. Ensuring the safety of victims and witnesses as well as that of judges and national and foreign investigators will be essential to the Court's success.

B. Reconciliation and other transitional justice mechanisms

92. In November 2014, the Government developed a comprehensive strategy for national reconciliation. The goal of this strategy is to develop an extensive local, regional and national network of mediators and peace facilitators responsible for promoting and strengthening social, cultural, interfaith and intercommunity mediation activities, so as to reduce violence in all its forms, ease tensions between communities and initiate a participatory and inclusive dialogue for national reconciliation and a lasting peace. The Independent Expert welcomes this initiative and encourages its rapid implementation throughout the territory. She also notes the important role of the Interfaith Peace Platform in the prevention of violence and welcomes the courage of those religious leaders who continue to take in displaced persons at churches and mosques in order to protect them.

93. The Republican Pact also calls for the establishment of a transitional justice mechanism and specifically for the establishment of a justice, truth, reparation and reconciliation commission, with branches at the local level, which will be responsible for identifying and investigating crimes and abuses committed in the country and recommending that perpetrators be brought to justice or that the victims receive reparations.

94. The Independent Expert welcomes the willingness of nationals of the Central African Republic to engage in a process of seeking the truth about the human rights violations committed in the past and analysing their causes and consequences. Each truth commission is a unique institution, but the activities of such commissions generally comprise the collection of testimonies of victims and witnesses, as well as thematic research, including analysis of violations, especially those based on gender and those targeting children, in addition to analysis of their causes and their consequences. Public hearings and other awareness programmes are then organized and the commission concludes with the publication of a final report outlining findings and containing recommendations. Developing a complete record of serious human rights violations is an important step in the realization of the right to truth.

95. The Independent Expert recalls the central role of victims in transitional justice programmes. She also recalls the importance of ensuring respect for the rights and opinions of the victims and setting up appropriate procedures that ensure their safety and dignity, as well as developing specific capacities to help, support and protect victims and witnesses.

C. Prisons

96. The conditions of detention in prisons in the country generally do not meet international standards and are often inhumane. Basic necessities such as food, clothing and medicine are insufficient and inadequate and are often confiscated by the prison authorities.

97. There is no centralized file on the total number of prisoners in the country, though efforts are being made to remedy this, particularly in Bangui. There, men and women are held in separate facilities. Elsewhere they are detained in the same

building, sometimes in different cells. At times, juvenile prisoners are kept with adults, while persons in pretrial detention are held with convicted prisoners.

98. Prisoners do not have reasonable access to visitors. Despite having the right to submit complaints in the event of ill-treatment, victims would be hesitant to do so because the complaint submission mechanism does not function as it should and no remedial measures are available.

99. In June 2015, the Independent Expert visited Ngaragba central prison in Bangui, where two-thirds of the 636 detainees were in pretrial detention. At least 10 of them were minors, and several inmates had been seriously injured, apparently before their detention. The majority of persons accused of serious crimes are held in this prison. Although efforts have been made, security, overcrowding, health and nutrition remain major challenges. The Independent Expert was able to meet at least eight sick prisoners who did not have access to proper health care. She also went to the Bimbo prison for women, which housed 17 inmates. The duration of pretrial detention can be anything from 6 weeks to a year.

100. MINUSCA and United Nations specialized agencies and their partners have implemented projects to rehabilitate the central prison and are working with the authorities on a national strategy for reopening judicial and penal institutions and deploying magistrates and prison personnel to locations outside Bangui where security conditions have improved. MINUSCA has deployed 20 corrections officers to support the reform of the national prison system and offers regular training.

101. The Independent Expert was also informed that several assessment missions have been organized with the Department of Prison Administration regarding the situations in the prisons of Bouar, Bossangoa, Bossembélé, Bria and Berbérati, with a view to funding and supporting their rehabilitation.

102. Prison security remains problematic. The Independent Expert was informed of the escape of Eugène Ngaïkosset, known as "The Butcher of Paoua" because of the atrocities he is alleged to have committed in the north-west of the country. The former soldier managed to escape on the night of 17 May 2015 from the investigation unit in Bangui. He had been arrested a few days earlier and transferred from Brazzaville to Bangui prison. His escape gives rise to numerous questions.

V. Conclusions and recommendations

A. Conclusions

103. **The Central African Republic has a unique opportunity to move decisively toward peace, national reconciliation and justice. Although one major political and military faction refused to participate in the Bangui Forum, in recent months the country has shown its determination, which has materialized in the form of a reasonable, far-reaching and consensual agreement. Effective follow-up and implementation of the recommendations of the Bangui Forum will be essential for the authorities to demonstrate to the population and the international community that they are truly committed to peace and reconciliation.**

104. **The coming months will be crucial. The authorities have announced an ambitious electoral calendar, with registration for the electoral roll in July, a referendum on a new Constitution in early October and legislative and presidential elections set for mid-October. However, many challenges remain. The ineligibility clauses of members of the transitional Government must be respected in accordance with the peace agreements. It will also be necessary to find solutions to enable displaced persons — both within and outside the country's**

borders — to be registered for, and participate in, the elections. Measures must be taken to allow those persons to exercise their political rights and participate in the referendum on the Constitution as well as the presidential and legislative elections.

105. The fight against impunity must also be effective, and it would be deplorable if individuals responsible for serious violations of international humanitarian law and human rights were to be reinstated in politics with impunity, as has happened in the past. The Independent Expert notes that the first criminal hearings since 2010 began in Bangui on 29 June 2015. That is a positive sign of the commitment of the State to re-establish the rule of law.

106. After the election set for October and a return to constitutional order, it will be necessary to remain steadfast in pursuing efforts toward reconciliation. This must be done through the promotion and protection of the rights of persons belonging to minority groups. The protection of minorities has often been demonstrated to be an effective way of preventing and resolving conflicts and building societies that are stable and open to all persons in post-conflict situations. The Interfaith Platform and other national and international initiatives have played an important role in reconciliation and the protection of minorities.

107. Finally, the Independent Expert recalls that the participation of women in the decision-making process, in particular as candidates and voters, is essential, as are efforts to help uneducated and jobless young people win back their place in society and envisage a future without violence.

B. Recommendations

108. The Independent Expert reiterates the recommendations contained in her previous report (A/HRC/26/53) and calls on the Government, with the support of the international community, to:

(a) Bring to justice all perpetrators of violations of international humanitarian law and human rights, irrespective of their status or political affiliation. She recalls in this regard that some of these acts may constitute crimes under the Rome Statute of the International Criminal Court, to which the Central African Republic is a party;

(b) Take measures to prevent gender-based violence and especially sexual violence on the part of all belligerents, and ensure the protection of civilians, especially women;

(c) Formulate a national strategy for combating impunity, so as to ensure that perpetrators of serious human rights violations, including sexual violence, are brought to justice; investigate all cases of violence against women and prosecute and punish the perpetrators, restore and strengthen the judicial system, improve judicial and prison infrastructure and ensure the security of all courts and places of detention; proceed with the rapid redeployment of all judges to their duty stations;

(d) Make every effort to ensure that the Special Criminal Court is established without delay so that investigations may begin; ensure the selection and appointment of judges and judicial personnel of the highest calibre who are familiar with the legal culture of the country, and ensure that the judicial process conforms to international fair trial standards;

(e) Make every effort to protect against any act of reprisal women and girls who are victims of sexual violence, particularly those who turn to the justice system, and raise awareness among the population to prevent those women and girls being ostracized by their families and communities;

(f) Establish transitional justice mechanisms offering guarantees concerning the need for justice, truth, the right to reparation and the non-repetition of violations, including by involving traditional institutions whenever possible. Special attention should also be paid to economic crimes committed in the context of armed conflict;

(g) Prosecute and punish all those responsible for violations against persons accused of witchcraft, and begin a national debate on the issue, including in respect of existing legislation, to find real solutions that respect universal human rights standards;

(h) Ensure that internally displaced persons and refugees have the right to return to their places of residence and to enjoy other benefits as nationals of the Central African Republic;

(i) Take measures to guarantee the safe return of internally displaced persons and refugees, including by securing their places of origin and their property;

(j) Encourage the participation of women at all stages of the peace process as part of national reconciliation, in all initiatives aimed at reconstruction and in the transitional justice process, and especially at the decision-making level;

(k) Arrange activities to raise awareness of the importance, for the whole of society, of the participation of women in the decision-making process, especially as candidates and voters;

(l) Encourage measures promoting social cohesion, in particular by taking steps to encourage and facilitate the participation of refugees and displaced persons in the electoral process and the constitutional referendum;

(m) Continue efforts aimed at deploying, with the assistance of MINUSCA, local administrators and the police and gendarmerie forces throughout the territory;

(n) Establish procedures to ensure the representation of minorities in public institutions such as the parliament and in public service, including the army, the police and the judiciary;

(o) Take all measures necessary to allow Muslim students to return safely to schools and universities, and adults to return to work;

(p) Provide specific protection for women and children affected by armed conflict, including through the deployment of child protection advisers and women protection advisers;

(q) Put in place a programme of disarmament, demobilization and reintegration adapted to children; consider professional apprenticeships for the reintegration of juvenile offenders who have been given light sentences and/or who have served their sentences;

(r) Combat trauma and post-traumatic stress disorder in children by establishing after-school support groups, training specialized school counsellors, improving school security and ensuring that schools are not used by any armed forces; and establish programmes to raise parents' awareness of the issue of sexual violence against children;

(s) Finalize without delay the bill establishing a national human rights commission in accordance with the Paris Principles, and ensure that its mandate covers equality and non-discrimination based on sex/gender and other interrelated factors;

(t) Abolish the death penalty, in accordance with the recommendations of the African Commission on Human and Peoples' Rights and the draft additional protocol to the African Charter of Human and Peoples' Rights on the abolition of the death penalty in Africa;

(u) In humanitarian assistance programmes and programming decisions, take full account of the needs of people living with disabilities;

(v) Establish a system to guarantee a minimum representation of women among members of parliament and offer incentives to political parties to put forward women candidates.

109. Following the commitment by the armed militias to release all children associated with the conflict, the Independent Expert requests the authorities, with the assistance of MINUSCA, to:

(a) Ensure that no child acts on behalf of a militia. Children released or separated from armed groups are victims and should receive special protection;

(b) Continue efforts towards reopening schools and rehabilitating hospitals and health centres; protect those institutions and put an end to their use for military purposes.

110. The Independent Expert recommends that the international community:

(a) Mobilize further to provide more assistance to the Central African Republic so that it may make the transition to peace, national reconciliation and combating impunity;

(b) Commit itself to funding the Special Criminal Court and supporting the criminal justice system in order to restore the chain of criminal prosecution;

(c) Continue funding humanitarian assistance programmes and the Central African Republic Regional Refugee Response Plan, which are considerably underfunded.

111. She appeals to the international community for urgent financing of the disarmament, demobilization and reintegration programme, with special attention to be paid to the needs of children associated with armed forces and groups.

112. The Independent Expert calls on the international community to provide technical assistance to the Government for the purposes of sound management of revenues from mineral resources.

113. Finally, she calls on the United Nations and the troop-contributing countries to shed full light on the allegations of sexual abuse committed in the Central African Republic, to bring those responsible to justice and to provide reparations to the victims. She urges all relevant authorities to take measures to strengthen prevention of such abuses, including by deploying personnel who are trained, qualified, equipped and commanded in such a way as to be able to fulfil their responsibilities to protect civilians.

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Agenda item 10
Technical assistance and capacity-building

Report of the Independent Expert on the situation of human rights in the Sudan, Aristide Nononsi*

Summary

The present report is submitted pursuant to Human Rights Council resolution 27/29, in which the Council extended the mandate of the Independent Expert on the situation of human rights in the Sudan and requested him to submit a report to the Council for consideration at its thirtieth session. In the report, the Independent Expert provides an overview of the situation of human rights situation in the Sudan, and outlines recent developments and some of the human rights challenges in the country following his first visit to the Sudan. He also describes the technical assistance and capacity-building needs of the Government, national human rights institutions and civil society organizations, and makes recommendations addressed to the Government, the international community, civil society organizations and the armed movements in the Sudan.

* Late submission

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I. Introduction

1. In its resolution 27/29, the Human Rights Council extended the mandate of the Independent Expert on the situation of human rights in the Sudan for a period of one year, and requested him to continue his engagement with the Government of the Sudan to assess, verify and report on the situation of human rights with a view to making recommendations on technical assistance and capacity-building for addressing human rights in the country; and to report to the Council at its thirtieth session.

2. The present report covers the period from 1 December 2014 to 30 June 2015. In compliance with the Code of Conduct of Special Procedures Mandate Holders of the Human Rights Council, a draft report was shared with the Government of the Sudan in order to provide it with an opportunity to comment on the observations and findings of the Independent Expert.

3. The present report is based on information made available to the Independent Expert during his visit to the Sudan, as well as on information provided by the Government of the Sudan, the African Union-United Nations Hybrid Operation in Darfur (UNAMID) and other sources, including civil society organizations, United Nations agencies, funds and programmes with operational competence in the Sudan, as well as the donor community.

4. The Independent Expert expresses his gratitude to the Government of the Sudan for its invitation and cooperation, to the Office of the United Nations Resident and Humanitarian Coordinator in Khartoum, and to UNAMID for supporting and facilitating his mission to the country. He also thanks the donor community and civil society organizations for their important work in promoting and protecting human rights in the country.

5. The Independent Expert also wishes to thank the previous mandate holder, Prof. Mashood Baderin, for the invaluable exchanges held on the complexity of the human rights situation and the development of the mandate.

II. Methodology

6. The Independent Expert undertook one visit to the Sudan during the period under review, from 13 to 23 May 2015, and visited Khartoum as well as the States of Northern and Southern Darfur. The objective of the field visits and meetings in this early part of his work on the Sudan was to identify the technical assistance and capacity-building needs of the Sudan that will enable the State to fulfil its human rights obligations.

7. In Khartoum, the Independent Expert held wide-ranging discussions with senior government officials, including the Minister for Justice, the Assistant to the President of the Republic of the Sudan and the Director General of Global Issues of the Ministry of Foreign Affairs. He was apprised of the situation of human rights in the country by the Rapporteur ad interim and members of the Advisory Council for Human Rights, and was encouraged by their response to some of the issues he raised. He also met the Chairperson and members of the National Commission for Human Rights. He had frank and fruitful discussions with the Deputy Director of the National Security Service, and interacted with the Chief Justice and ranking members of the Judiciary, the Chairperson and members of the National Commission for Human Rights, the Chairperson and members of the National Elections Commission, the Director of the Humanitarian Aid Commission, the Chairperson and members of the Sudanese Bar Association, the Chairperson and members of the National Press Council, the National Council for Child Welfare, the National Mechanism for Family and Child Protection Unit and the National Demining Centre. The Independent Expert also

attended a forum on the impact of unilateral coercive measures on the enjoyment of human rights. He also met with representatives of civil society organizations, human rights defenders and victims of human rights violations, some of whom shared their personal experiences with him. He met with members of the diplomatic community, representatives of opposition political parties and staff members and students of the University of Khartoum, from whom he received valuable information on the human rights situation in the country.

8. In Northern Darfur, the Independent Expert met with a representative of the Darfur Regional Authority, the Governor of the State of Northern Darfur, the Special Prosecutor for Crimes in Darfur and officials of UNAMID and United Nations agencies in Northern Darfur. In Southern Darfur, he held a meeting with the Governor of Southern Darfur State and his team, as well as with officials of UNAMID. He also visited three camps for internally displaced persons, namely, the Abou Shouk camp in Northern Darfur and the Otash and Dereige camps in Southern Darfur, where he witnessed the deplorable living conditions of the residents.

9. During his visit, the Independent Expert reiterated the scope of his mandate to the Government and all relevant stakeholders. As explained by the previous mandate holder (see A/HRC/21/62), the Government of the Sudan continues to hold the position that since the mandate of the Independent Expert is no longer under the Human Rights Council agenda item 4 ("Human rights situation that requires the Council's attention") but rather under item 10 ("Technical assistance and capacity-building"), no reporting or monitoring on any element of human rights was required. For their part, other national and international stakeholders expressed the view that the mandate includes assessment of and reporting on the situation of human rights in the Sudan, essential to the formulation of realistic and workable technical advice for a gradual and effective improvement in that situation.

10. The Independent Expert confirms his understanding that the mandate does indeed come under agenda item 10, and that it includes the responsibility to assess and report on the situation of human rights in view of making sound recommendations on technical assistance and capacity-building. This was underscored by the Human Rights Council in its resolution 27/29, in which the Council renewed the mandate of the Independent Expert to continue "to assess, verify and report on the situation of human rights with the view to make recommendations on technical assistance and capacity-building for addressing human rights in the country." This mandate enables the Government of the Sudan to take ownership in supporting the implementation of the recommendations. It also enables the donor community to provide additional targeted financial support and the technical expertise needed to address the human rights challenges in the country.

11. The Independent Expert notes with satisfaction that the Government has endorsed his understanding and analysis of the scope of the mandate, which enabled his engagement with a wide range of stakeholders, including the donor community, leaders of the political opposition and others civil society actors. He also points out that the Government showed its willingness to continue to cooperate with the Human Rights Council in order to fulfil its human rights obligations. In all his meetings with the Government, the Independent Expert received assurances of cooperation with the mechanism he represents. Nonetheless, he remains concerned by assessment given by Sudan officials of the human rights situation in the country that appears not to take into account the deteriorating environment.

III. Recent developments

12. On 4 January 2015, Parliament approved amendments to the 2005 national interim Constitution, including additional powers for the President to appoint and remove senior officials, including State governors, as well as those holding other senior constitutional, judicial, military, police and security posts. The amendment to article 151 transformed the National Security Service from an intelligence agency focused on information gathering, analysis and advice to a full-fledged security agency with a broad mandate to exercise a number of functions usually carried out by the armed forces or other law enforcement agencies.

13. The Independent Expert notes that the increased mandate and powers of the National Security Service is already having a far-reaching, negative impact on the promotion and protection of human rights. Under the National Security Act, National Security Service agents have immunity from civil and criminal liability for acts conducted in "the course of their duty" or in "good faith". They are only subject to prosecution if the Director General of the National Security Service decides to lift this "immunity" or "prerogative".

14. With the recent development, there is a risk that the mandate of the National Security Service, cutting across intelligence, military and law enforcement spheres, could also undermine or unduly interfere with ordinary police work, thus creating confusion and causing further dysfunction in the criminal justice system.

15. On 22 February 2015, the President of the Sudan assented to a bill amending article 149 of the Sudanese Criminal Code. The amendment made a substantive and legal distinction between rape and adultery. The Independent Expert commends the Sudanese authorities for this legal reform, which constitutes a concrete step in the fight against impunity for violence against women in the Sudan. He expects that more cases of sexual violence, particularly rape, will be reported to authorities, and that rape victims will be encouraged to pursue legal redress given that they will no longer be accused of adultery.[1]

16. General elections were held at all levels of government (national, state and local) from 13 to 15 April, despite repeated calls from opposition forces and civil society groups for a postponement of the elections. The elections were extended by a day by the National Elections Commission, until 16 April. Three major opposition parties, including the Umma National Party, the Popular Congress Party and the Sudanese Communist Party, under the umbrella of the National Consensus Forces, as well as some civil society organizations boycotted the elections, claiming that the political and security environment was not conducive to the holding of free and fair elections. The elections were monitored by observers from the African Union, who reported a low turnout of voters throughout the country. In the final results released by the National Elections Commission, President Omar Al Bashir was declared winner in the national presidential ballot, winning 94 per cent of votes.

17. In the lead-up to and during the elections, human rights organizations and UNAMID recorded a number of human rights violations. On 6 and 7 December 2014, Dr. Amin Mekki Medani, a human rights activist, Farouk Abu Issa, the leader of the National Consensus Forces, and Farah Alagar, another political activist, were arrested by the National Security Service for having signed and supported the "Sudan Call", a political declaration calling for the restoration of democracy in the Sudan that had been signed by Sudanese opposition parties, rebel movements and civil society. Dr. Medani and Mr. Abu

[1] Prior to the amendment, legal provisions in the article allowed for prosecution of rape victims for adultery if rape was not proven.

Issa were detained incommunicado for 2 weeks and later charged in a terrorism court with having undermined the constitutional order and for waging war against the State, two crimes for which the death penalty may be applicable and bail was therefore not guaranteed. On 9 April 2015, their trial was suspended and they were released, together with Mr. Alagar.

18. On 12 April 2015, concerns were raised about the situation of Sandra Kodouda, a Sudanese activist, who was abducted by unidentified persons while on her way to a meeting at the headquarters of the National Umma Party to discuss the election boycott. The National Security Service denied that she had been detained before her release on 15 April. She subsequently issued a written apology, reportedly under duress, in which she denied any involvement of the National Security Service – after it filed defamation charges against her – in her temporary disappearance.

19. In Darfur, the authorities continued to impose restrictions on the rights to freedom of expression, association and peaceful assembly. In El Fasher, Northern Darfur, demonstrations organized by students at El Fasher University on 14 and 15 April 2015 were repressed by Sudanese police, who arrested and detained 20 students. The students were charged with offences relating to "assault on the constitutional order", one of which carried a maximum penalty of death. The latter was subsequently removed from the charge sheet and the students were granted bail on 22 April.

IV. Main human rights challenges

20. In spite of some progress made in legislative reforms, the Sudan continues to face enormous human rights challenges in terms of securing basic fundamental rights, in particular the rights to freedom of expression and opinion, freedom of the press, freedom of association and peaceful assembly, and freedom of religion. In addition, the recent military operations of the Government in the conflict-affected areas of Darfur, the States of Southern Kordofan and Blue Nile, as well as inter-tribal clashes, continue to result in serious human rights violations and the large-scale displacement of civilians in these regions. Impunity for human rights violations and abuses, and serious violations of international humanitarian law, remains a recurring problem. The enjoyment of economic, social and cultural rights also needs to be improved to address the severe poverty affecting particularly women and children.

21. The Independent Expert discussed these challenges in his meetings with government representatives and appreciates the Government's commitment to address them as part of its efforts towards improving the situation of human rights in the country.

A. Press censorship

22. There is a need to ensure the protection of freedom of the press in the Sudan; the Independent Expert notes in particular the application of national security laws to clamp down on the press, including through the closure of media houses, the arrest of journalists and the confiscation of newspapers and equipment by the National Security Service.

23. Since December 2014, there have been several clampdowns on press and media freedoms, including the censorship and temporary closure of several newspapers. During the period under review, at least 16 newspapers had their publications confiscated on 42 different occasions by the National Security Service. Several journalists reported interrogation and harassment by the police and of security service agents. On 16 February 2015, the print runs of 14 newspapers were confiscated. On 25 May, the editions of 10 newspapers were seized by security service officers. These actions contravene article 39 of

the interim national Constitution of the Sudan (2005), which guarantees "freedom of expression and the media".

24. The Independent Expert had raised this issue in his discussions with government officials as a legitimate concern to which the Government needed to pay attention, in view of the importance of freedom of expression and of the press in the promotion and protection of human rights in a democratic society.

B. Curtailment of activities of civil society organizations

25. During the period under review, the Government continued to clamp down on the activities of civil society organizations.

26. Four leading civil society organizations have been shut down, while at least five others are under threat of imminent closure. On 18 January 2015, the National Security Service raided the Mohmoud Mohamed Taha Cultural Centre. Later that month, the National Civic Forum and the Sudanese Writers Union were informed by letter that their licences would be revoked by the Ministry of Culture. On 26 March, security agents raided the Terakes Training and Human Development Centre in Khartoum while Adil Bakheit, a member of the Sudanese Human Rights Monitor, was conducting a human rights workshop. During the raid, Mr. Bakheit's computer and documents were confiscated. Three staff members of the Centre were interrogated in connection with the raid.

27. On 16 April 2015, Mr. Bakheit was arrested by the National Security Service while he was attending a workshop at the Tracks Training Centre in Khartoum. He was subsequently charged with criminal conspiracy, inciting opposition against public authority through the use of violence or criminal force, the publication of false news, offences against the State and impersonating a public servant. He was released on bail on 3 May.

28. The above-mentioned actions appear to be in contravention with the rights to freedom of peaceful association as set forth in the International Covenant on Civil and Political Rights and the principles of the Declaration on the Rights and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms. They also contravene article 40 of the interim national Constitution of the Sudan, which guarantees the freedom of assembly and association.

29. The Independent Expert notes the important role played by human rights defenders in democratic societies, and stresses the need for the Government of the Sudan to allow them to carry out their activities in an open, safe and secure environment.

C. Freedom of religion

30. The right to freedom of religion is enshrined in article 18 of the International Covenant on Civil and Political Rights and in article 38 of the interim national Constitution of the Sudan. The interim national Constitution also established the Commission for the Rights of Non-Muslims in Khartoum State to ensure that their rights are protected in accordance with the Constitution. The Independent Expert, however, received information in relation to incidents of arrest and restrictions of freedom of religion or belief of the Christian communities. On 14 December 2014, Reverend Yat Michael Ruot Puk, a pastor from the Southern Sudan Evangelical Church, was arrested by National Security Service officers. On 11 January 2015, Reverend Peter Yein Reith was arrested at his residence. Both clergymen were arrested without any arrest warrant and were held incommunicado until 1 March 2015. On 4 May, they were brought before a court, where they were both

charged with undermining the constitutional system, waging war against the State, espionage, unlawful disclosure and receipt of official information or documents, arousing feelings of discontent among regular forces, breach of public peace and offences relating to insulting religious beliefs. Following these charges and subsequent hearings on 19 and 31 May, both pastors were allegedly moved to a high security prison in North Khartoum. They were last seen by their families and pastors from their church on 3 June.

31. The Independent Expert is concerned about the arrest, detention and possible trial of the two people, which would be in contravention of articles 18, 19 and 20 of the Universal Declaration of Human Rights and articles 18, 19, 21, 26 and 27 of the International Covenant on Civil and Political Rights that stress the rights to freedom of religion, freedom of opinion and expression, freedom of peaceful assembly and of minorities. He calls upon the Government of Sudan to respect the fundamental freedoms enshrined in the interim national Constitution and to allow the Sudanese people to exercise their rights freely.

D. Human rights violations committed during the demonstrations of September 2013

32. The Independent Expert also met with representatives of some of the family members of deceased victims of the oil-subsidy demonstrations held in September 2013 across Khartoum State, which resulted in fatal shootings, injuries and the destruction of property, as well as the arrest and detention of many demonstrators. The "brief report on the acts of violence of September 2013", prepared and issued by the Office of the Chief Prosecutor of Khartoum State, was discussed at length by the previous mandate holder in his last report (A/HRC/27/69). The family members and their lawyers affirmed that they had all lost hope in their quest for justice for their deceased relatives, and felt threatened.

33. The Independent Expert calls upon the Government to ensure that an independent judicial inquiry is conducted into the killings and various other human rights violations, to address arbitrary violations of the fundamental right to life, and impunity.

E. Conflict-affected areas

34. Armed conflicts and lack of security continue to be major sources of human rights violations in different parts of the Sudan. In particular, Darfur and the States of Southern Kordofan and Blue Nile continue to experience sporadic cycles of armed conflicts, violent attacks and banditry, which have had a negative impact on civilians during the reporting period.

1. Darfur

35. As the conflict in Darfur, which broke out in February 2003, enters its twelfth year, the situation of human rights continues to be a major concern. While the signing of the Doha Document for Peace in Darfur by the Government and the Liberation and Justice Movement was a sign of political progress, the persistence of fighting between the Sudanese Armed Forces and non-signatory armed opposition groups has been compounded by clashes between various tribes (the latest reported being between the Rezeigat and the Maalia in East Darfur) that highlight the vulnerability of civilians in the region. Indiscriminate attacks against civilians, tribal clashes and heightened criminality continued unabated, at the most met by a feeble response from law enforcement officials and security institutions, leading to the loss of lives, civilian injuries and the destruction of civilian property.

36. According to UNAMID, patterns and incidents of violations of human rights and international humanitarian law deteriorated following the deployment to Darfur of the Rapid Support Forces in 2014, which was part of Operation Decisive Summer During the campaign, UNAMID documented cases in which the Rapid Support Forces launched attacks, including on civilians suspected of being sympathetic to armed opposition movements in both Northern and Southern Darfur States. The attacks involved multiple human rights violations and serious violations of international humanitarian law, including the indiscriminate killing of civilians, the destruction of civilian property and objects, and considerable displacement of civilians. UNAMID also obtained accounts from victims and witnesses that pointed to a pattern in the burning of villages, the looting of civilian property, including livestock, and the destruction of sources of livelihood necessary for civilian survival.

37. Although large-scale fighting between the Government and armed groups have subsided,[2] sporadic clashes, acts of banditry, intercommunal violence and restrictions to freedom of movement and political liberties persist throughout Darfur and continue to pose challenges to a participatory and comprehensive political dialogue. In particular, tribal clashes stemming from resource-related disputes, including land, are becoming a major source of insecurity as they increasingly involve well-armed individuals who have pledged their allegiance, sometimes on tribal lines, to either armed groups or the Government of the Sudan and its forces, namely, the Rapid Support Forces, the Border Guards and the Central Reserve Police.

38. The lack of substantive progress in achieving a durable peace coupled with the emergence and shifting loyalties of armed groups have continued to fuel the conflict, during which serious violations of human rights and international humanitarian law are perpetrated by all parties to the conflict.

(a) Situation of internally displaced persons

39. According to the Office for the Coordination of Humanitarian Affairs, the conflict in Darfur has led to the internal displacement of some 2.5 million people, most of whom depend on support for basic services and on aid from humanitarian agencies. The Independent Expert visited the Abou Shouk, Otash and Dereige camps for displaced persons in Northern and Southern Darfur States. He is concerned not only at the ongoing displacement of residents and the attendant humanitarian crisis, but also for the future of displaced persons in general.

40. In Nyala, the representatives of internally displaced persons informed the Independent Expert that the newly displaced were not receiving any aid, in particular food or medical assistance, owing to the limited stocks of humanitarian aid. The Independent Expert therefore calls upon the Government of the Sudan and the international community to provide humanitarian assistance to displaced persons, who live in very precarious conditions, and thereby help to realize their economic, social and cultural rights. These people live in a state of insecurity owing to the presence of various armed elements and to crimes that are commonplace in the region. The Independent expert also calls upon the Government and UNAMID to fulfil their obligation to create a safe and secure environment for these displaced communities, and to ensure that, once created, these environments remain secure.

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[2] Operation Decisive Summer 1 in 2014 and Operation Decisive Summer 2 in 2015 were the most prominent clashes to be reported for their impact on the displacements of civilians.

41. Occupation of lands by armed groups, insecurity and absence of basic infrastructure were some of the key reasons mentioned by displaced persons preventing them from returning to their homeland. Most of these persons, however, expressed their willingness to return if the security situation were to improve. The Independent Expert urges the Government of the Sudan to create the necessary conditions for the return of internally displaced persons to their places of origin and the international community to support this process.

42. The Independent Expert strongly urges all parties to the conflict to respect international human rights and international humanitarian law and to ensure humanitarian access at all times and to protect civilians.

(b) Sexual and gender-based violence

43. The Independent Expert is particularly concerned about the prevalence of sexual and gender-based violence throughout Darfur. This violence against women and girls includes acts of rape and sodomy, gang rape, attempted rape and harmful traditional practices, as well as domestic violence. From January to April 2015, UNAMID documented 27 incidents involving 39 victims of sexual and gender-based violence. UNAMID, through its follow-up with local sources, also established that cases of sexual violence were largely underreported. Most victims of sexual violence are displaced women and girls attacked while engaged in livelihood activities outside their camp. In some cases, victims are attacked while in the supposed safety of their shelters inside the camp or while fleeing for safety during attacks on their villages. The pattern that has emerged from these attacks suggests that, in most cases, perpetrators cannot be identified; in other cases, attacks were allegedly perpetrated by government security forces, signatory and non-signatory armed factions and sometimes by individuals not part of any organized group or government entity.

44. The general failure and sometimes reluctance of law enforcement officials to register or investigate sexual violence offences appropriately continues to impede victims' access to justice. In some cases of sexual and gender-based violence, victims cite their lack of trust in the local authorities to take appropriate action as the reason for not reporting attacks. Although some cases reported to the local authorities have led to a prosecution, the vast majority of perpetrators go unpunished, while others seek an out-of-court settlement. In addition, the requirement that victims of sexual and gender-based violence fill in "form 8" – a document used by the police to obtain a forensic opinion regarding a crime from an authorized government expert – continues to pose a challenge to victims in their access to justice, despite the fact that, in 2004, the Federal Ministry of Justice issued a circular that exempted victims of sexual and gender-based violence from this procedure. A decade later, some victims of sexual and gender-based violence are still required to complete form 8 before they can have any access to medical assistance or criminal justice services.

45. The difficulties encountered by UNAMID in gaining access to information, sites and victims of alleged human rights violations and abuses continued to impede the reporting of cases of sexual and gender-based violence. The Independent Expert nonetheless noted that some steps were being taken by the Government of the Sudan to respond to violence against women, including the legal reform of the controversial article 149 of the Sudanese Criminal Code (see para. 15 above), which now dissociates the definition of rape from adultery, as well as establishing of bodies that address of gender-based violence at the local level, to address violence against women in the Darfur States. While these steps are welcomed, concrete measures to prevent and address sexual and gender-based violence and other forms of violence against women should be developed at the earliest opportunity.

(c) Economic, social and cultural rights

46. In Darfur, widespread poverty, compounded by poor infrastructure and health and social services, as well as environmental hazards, has been further exacerbated by the ongoing armed conflict, which has adversely affected the conditions necessary for the enjoyment of such basic rights as the rights to food, housing, health, water, sanitation and education by the civilian population.

47. Poverty levels in Darfur are among the highest in the country; almost two thirds of the population live below the poverty line. Land occupation and land use issues are a recurring issue in all parts of Darfur. In particular, issues of access to land often trigger intercommunal conflict in the region. While the entire population of Darfur has been affected by the crisis, women, by virtue of their social and legal status and as a result of traditional norms and customs, face increased discrimination, which has a negative impact on their enjoyment of economic, social and cultural rights.

48. The Government does not appear to have records, information and reliable statistics that would enable it assess the progressive implementation of its obligations under the International Covenant on Economic Social and Cultural Rights, which the State has ratified.

2. Southern Kordofan and Blue Nile

49. During the period under review, several reports were received of human rights violations in the States of Southern Kordofan and Blue Nile. The violations included systematic attacks against civilians by both government forces and armed opposition groups and bombing in areas populated by civilians in the Nuba Mountains – acts contrary to the international humanitarian principles of distinction and proportionality. According to information received by the Independent Expert, between January and April 2015, the Sudanese Air Force dropped approximately 374 bombs in 60 locations in Southern Kordofan. The aerial bombardments and ground shelling resulted in the deaths of an estimated 35 civilians and injured a further 70 individuals, and damaged civilian objects, including villages, schools and mills.

50. Reports indicate that a hospital run by Medecins sans Frontières in Southern Kordofan was bombed, in violation of international humanitarian law, on 20 January 2015, forcing the suspension of all medical activities. The organization decided on 29 January 2015 to shut down its operations in the Sudan owing to the restrictions on its activities. The Independent Expert also received information on a surge in fighting on the ground between government forces and the Sudan People's Liberation Movement-North (SPLM-N), in particular following the elections. The fighting caused the displacement of approximately 50,000 people in the States of Southern Kordofan and Blue Nile in May 2015.

51. Violations of human rights and international humanitarian law were also perpetrated by armed movements. On 12 March 2015, a attack by SPLM-N on Kalogi in Southern Kordofan reportedly resulted in 40 civilian deaths, 45 injuries and the displacement of 25,000 people. On 25 June, another attack by SPLM-N in Southern Kordofan is said to have led to the death of a dozen civilians and the wounding of approximately 100 others.

52. The Independent Expert remains deeply concerned at the situation in the States of Southern Kordofan and Blue Nile, and reiterates his willingness to visit these regions during his next visit to the Sudan with a view to assessing the ongoing situation.

V. Assessment of the situation of human rights

53. Despite some progress made in the legislative reform, some remaining challenges severely impede any significant improvement in the overall situation of human rights in the Sudan. Most of the recommendations made by the previous mandate holder remained largely unimplemented during the period under review. In addition, the African Commission on Human and Peoples' Rights recently published a ruling of March 2014 in which it found the Sudan responsible for violating the rights of three Sudanese nationals by, inter alia, illegal incarceration and torture. The Commission has requested the Government to compensate the victims.

54. The ongoing violence in Darfur and in the States of Southern Kordofan and Blue Nile has been marked by widespread impunity. Perpetrators of human rights violations and abuses and violations of international humanitarian law, including government security forces and affiliated-militia and armed opposition movements, have rarely been held to account for their actions. The judicial response to these violations and abuses continues to be weak. In particular, the Independent Expert stresses that combating impunity should be a foremost priority of the Government of the Sudan that should include ensuring effective, efficient access to justice for victims of human rights violations and abuses.

55. There have been restrictions on political rights and fundamental freedoms, including the freedom of expression, freedom of the press, the freedom of association and peaceful assembly, forced disappearances, sexual and gender-based violence, arbitrary arrests and detentions, torture and degrading treatment perpetuated by security forces and armed movements against the civilian populations as well as denial of humanitarian access to conflict-affected areas. The Independent Expert calls upon the Government of the Sudan to facilitate access to the affected population for delivery of humanitarian assistance.

56. The Independent Expert continued to receive reports of prolonged detention of persons without access to legal representation or to their families. He calls upon the Government of the Sudan to respect the political and civil rights and fundamental freedoms enshrined in the interim national Constitution and to allow the Sudanese people to exercise their rights freely. He also calls upon the Government to release all detained persons or to charge and prosecute them in accordance with the law.

57. The Independent Expert is concerned that the death penalty continues to be applied, and that lashing is used as a routine penalty, in contravention of international human rights law. Moreover, the use of torture is a clear contravention of international law and article 33 of the interim national Constitution.

58. The Independent Expert notes that all his governmental interlocutors raised the issue of unilateral coercive sanctions against the Sudan, qualifying them as a serious violation of basic human rights because of their negative impact on the situation of human rights. During the visit of the Independent Expert, the Government organized a forum on the negative impact of unilateral coercive measures on the enjoyment of human rights. The Government underscored the negative impact of these measures on the Sudanese people, in particular on women and children. It also advocated for the lifting of sanctions by the international community, seeking instead an international engagement to a broad programme of technical assistance for the Sudan.

59. The Independent Expert raised the matter with the newly appointed Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, Idriss Jazairy, for appropriate follow-up.

VI. Technical assistance and capacity-building

60. The establishment of the National Commission for Human Rights, the Advisory Council for Human Rights and other governmental human rights bodies, such as the Human Rights Committee of the National Assembly, the Unit to Combat Violence against Women and Children, the National Council for Child Welfare, the Family and Child Protection Unit of the police force, the Darfur Regional Authority, the Special Court for Darfur Crimes and others ministerial units or commissions is a sign of institutional progress in the field of human rights in the Sudan. The Independent Expert takes notes their establishment with satisfaction, and encourages the Government to provide further support for their independence and financial autonomy, in particular of the National Commission for Human Rights.

61. Despite the fact that administrative control over some of the above-mentioned bodies and mechanisms could appear to be excessive, it remains necessary to continue to strengthen and work with them. Local civil society organizations also have their role to play, and need to be strengthened as well so as to make meaningful progress in the improvement of human rights in the Sudan.

62. There is, to a large extent, some level of consensus among stakeholders of the need for capacity-building in the form of relevant human rights training for members of these mechanisms, as well as of the judiciary, the police, the National Security Service and non-governmental human rights organizations. The need for public awareness and human rights empowerment initiatives were also identified. Technical assistance and capacity-building initiatives are, however, capital-intensive and require high levels of funding, which must be sourced both internally from the Government itself and externally from different cooperating partners within the donor community and institutions.

63. In his meetings with UNAMID, United Nations agencies and members of the diplomatic corps, the Independent Expert was informed of a number of ongoing support and technical assistance programmes for the Sudan in the field of human rights. He urges other donor countries and the international community to provide the necessary technical and financial support to the Sudan in the field of human rights.

64. During the period under review, international partners, in particular UNAMID, the United Nations Development Programme and the United Nations Children's Fund, provided various forms of technical assistance and capacity-building to government institutions and civil society, as a contribution to improving the human rights situation in the country. Mention should also be made of the training of national partners on child rights and child protection, and of the training of prosecutors, including the Special Prosecutor for Crimes in Darfur, the training of 400 community police volunteers and English lessons for more than 3,000 internally displaced persons.

65. Furthermore, the Independent Expert was also pleased to observe the support provided by international partners, including the United Nations country team and UNAMID, to the Ministry of Justice to help to implement the universal periodic review recommendations, in particular those related to the rights of women and children, and the technical assistance given to the Advisory Council for Human Rights in relation to the preparation of the national report for the second cycle of the universal period review. Technical assistance has also been provided to the National Commission for Human Rights, in particular in the preparation of its strategic plan and the establishment of its branch in Darfur. He welcomes the efforts being made by UNAMID and the United Nations country team to strengthen the capacity of civil society, including all efforts aimed at building rule of law institutions through legislative reforms and legal aid.

66. It is essential for the donor community to continue its financial and technical support for the Government of the Sudan and civil society to ensure capacity-building on human rights.

67. The Independent Expert has identified, as an important capacity-building concern for the Sudan, the need for human rights education, and more specifically of human rights litigation training, and for broader empowerment of civil society. In addition, he endorses the recommendations made by the previous mandate holder concerning the need for a programme of technical cooperation in the field of human rights with the National Commission for Human Rights.

VII. Conclusion and recommendations

68. **Despite the willingness of the Government of the Sudan to continue to engage with the international community and to discuss the situation of human rights in a positive manner, the situation in the Sudan remains a source of serious concern. The way to improve the situation has been outlined in a number of previous reports, and the recommendations made therein remain to be considered seriously.**

69. **The Independent Expert underscores the centrality of human rights and of the rule of law to peace and stability in the Sudan, and calls upon the Government of the Sudan to continue its efforts to address the conflict in Darfur as part of a holistic approach to the challenges of peace, governance and democracy in the Sudan.[1] He believes that the national dialogue initiative announced by the Government in January 2014 offers an opportunity to advance democratic reforms, peace, reconciliation and power-sharing in the Sudan.**

70. **Other challenges include combating impunity and ensuring humanitarian access to areas affected by conflicts. In this regard, the Independent Experts calls upon the Government of the Sudan to renew its efforts in these areas to fulfil its human rights obligations.**

71. **The Independent Expert calls upon the Government of the Sudan to acknowledge the persistence of human rights violations and abuses in the country, and to allow effective access by the Independent Expert and other human rights mandate holders to visit all areas of the country, and to meet with relevant stakeholders with a view to addressing the human rights concerns and humanitarian challenges facing the Sudan.**

72. **The Independent Expert notes with satisfaction the renewal by the Security Council of the mandate of UNAMID, and encourages donor States and international institutions to continue to provide it with the much-needed support with a view to enhancing its capacity to discharge more effectively its mandate and to alleviate the humanitarian crisis in Darfur (see S/2015/378). The Independent Expert remains particularly concerned at all hostile actions and attacks against UNAMID personnel and assets, and against humanitarian organizations and their staff. He calls upon the Sudan to arrest and prosecute all perpetrators of these acts, in accordance with the principles of equitable and fair judicial process.**

73. **In addition to the recommendations made by the previous mandate holder, the Independent Expert makes the recommendations below.**

[1] See African Union, Peace and Security Council communique PSC/PR/COMM.(DXVI), 22 June 2015.

A. Government of the Sudan

74. The Independent Expert calls upon the Government of the Sudan:

(a) To acknowledge the persistence of human rights violations and abuses in the country;

(b) To continue and deepen its efforts to combat impunity by prosecuting all perpetrators of human rights violations and abuses and violations of international humanitarian law in the country;

(c) To prevent interference by security forces in the activities of civil society and to provide the National Commission for Human Rights with the human and financial resources necessary to fulfil its mandate, to ensure its independence in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), and to continue to facilitate the establishment of its branch offices beyond Khartoum and Darfur;

(d) To conduct an inclusive and transparent national dialogue, as initiated by the Government in January 2014, and to ensure the participation of all stakeholders, including regional observers, with a view to advancing peace and reconciliation in the country;

(e) As the national dialogue evolves, to explore the organization of a donors conference to support concrete proposals for technical cooperation and capacity-building in the area of human rights in the Sudan;

(f) To implement the recommendations of the previous mandate holder without further delay, including:

(i) To institute an independent judicial public enquiry into the killings of civilians and other human rights violations during the demonstrations of September 2013;

(ii) To ensure that its security agents desist from arbitrary arrest and detention, press censorship, clamping down on civil society organizations, and to respect fully the right to liberty and freedom of individuals;

(iii) To put an end to indiscriminate aerial strikes and to respect the principle of proportionality in its armed response to attacks by armed movements;

(iv) To respond formally to communications received under the special procedures system in a timely manner;

(g) To call a moratorium on the use of the death penalty and to review routine recourse to lashing, and to ensure that the right not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment is upheld;

(h) To ensure that all discrimination against and assaults on the human dignity of the Darfuri on the basis of ethnic and tribal affiliation cease;

(i) To challenge the culture of silence and denial surrounding sexual and gender-based violence;

(j) To review article 152 of the Sudanese Criminal Code (1991) on "indecent dress", to ensure that the offence of modesty and the penalty of flogging do not perpetuate violence against women, and to ensure equality in the enjoyment of civil and political rights;

(k) To provide full cooperation to UNAMID, to ensure that all hostile actions and attacks against it cease, and to ensure that it may continue to promote and protect human rights and support the peace process in Darfur;

(l) To ensure that humanitarian access is available and assistance is provided to internally displaced persons, and that their economic, social and cultural rights are respected.

B. International community

75. The Independent Expert calls upon the international community:

(a) To enhance its technical cooperation with and assistance to the Government of the Sudan, and to take concrete actions towards implementing the recommendations made by the previous mandate holder;

(b) To pursue efforts to support national dialogue and to facilitate the pursuit of peace, security, stability and reconciliation in the Sudan;

(c) To continue to support the programme of technical cooperation in the field of human rights with the Advisory Council for Human Rights, and also to develop a programme of technical cooperation for the National Commission for Human Rights;

(d) To continue to work closely with civil society stakeholders and to take into consideration their needs for technical assistance and empowerment in the field of human rights education, in particular litigation;

(e) To continue to support the continued presence of UNAMID in Darfur by providing it with the resources necessary for the protection of the civilian population and its basic rights;

(f) To ensure that internally displaced persons are provided with humanitarian assistance, and that their economic, social and cultural rights are respected.

C. Civil society organizations in the Sudan

76. The Independent Expert encourages civil society organizations in the Sudan to seek opportunities to enhance their human rights education, and in particular, their training in human rights litigation. He invites civil society organizations, while continuing their pivotal work in the promotion and protection of human rights, to develop concrete proposals to fund technical assistance and capacity-building, and submit them to international and regional actors.

D. Opposition armed movements

77. Given that the Independent Expert was not able to meet representatives of opposition armed movements in the Sudan during his first visit, he prefers to make his recommendations at a later date. The Independent Expert, however, calls upon the armed movements in the Sudan to take concrete action towards implementing the recommendations made by previous mandate holders, in particular with regard to the respect of human rights and international humanitarian law.

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Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General

Comprehensive report of the Office of the United Nations High Commissioner for Human Rights on Sri Lanka*

Summary

The present report contains the principal findings of the comprehensive investigation conducted by the Office of the United Nations High Commissioner for Human Rights into alleged serious violations and abuses of human rights and related crimes during the armed conflict in Sri Lanka. The Office reviews human rights-related developments in the country since March 2014, in particular reforms and the steps taken towards accountability and reconciliation by the new President elected in January 2015, and the new Government elected in August 2015. The report concludes with recommendations of the High Commissioner on the way forward, including on the establishment of a hybrid special court to try war crimes and crimes against humanity allegedly committed by all parties to the armed conflict.

* Late submission. For detailed findings of the investigation by the Office of the United Nations High Commissioner for Human Rights on Sri Lanka, see document A/HRC/30/CRP.2.

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I. Introduction

1. The present report is submitted pursuant to Human Rights Council resolution 25/1, in which the Council requested the Office of the United Nations High Commissioner for Human Rights (OHCHR) to monitor the human rights situation in Sri Lanka and to continue to assess progress on relevant national processes; to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the Lessons Learnt and Reconciliation Commission, with assistance from relevant experts and special procedures mandate holders; and to present a comprehensive report to the Council at its twenty-eighth session.

2. Following signals of engagement by the newly elected Government of Sri Lanka in January 2015 and the possibility that further information might become available for the investigation, the Human Rights Council accepted the recommendation made by the High Commissioner that consideration of the report be deferred until the thirtieth session (see A/HRC/28/23).

3. The present report includes the findings of the OHCHR investigation on Sri Lanka, a special team established by the former High Commissioner, Navi Pillay, to conduct the comprehensive investigation mandated by the Human Rights Council in its resolution 25/1 (see also A/HRC/30/CRP.2). The High Commissioner invited three distinguished experts – Martti Ahtisaari, former President of Finland, Dame Silvia Cartwright, former High Court judge of New Zealand, and Asma Jahangir, former President of the Human Rights Commission of Pakistan – to play a supportive and advisory role. Human Rights Council special procedure mandate holders also made their input to the investigation.

4. It is important at the outset to stress that the present report represents a human rights investigation, not a criminal investigation. The time frame covered by the investigation, the extent of the violations, the amount of information available and the constraints to the investigation, including lack of access to Sri Lanka and witness protection concerns, posed enormous challenges. Nevertheless, the investigation team attempted to identify the patterns of violations of international human rights and humanitarian law perpetrated, not only during the final stage of the armed conflict but during the whole period covered by investigation.

5. These patterns of conduct consisted of multiple incidents that occurred over time. They usually required resources, coordination, planning and organization, and were often executed by a number of perpetrators within a hierarchical command structure. Such systemic acts cannot be treated as ordinary crimes but, if established in a court of law, may constitute international crimes, which give rise to command as well as individual responsibility.

6. The report is submitted to the Human Rights Council in a very different context to the one in which it was mandated. The election of a new President and Government on a platform centred on good governance, human rights and the rule of law have given Sri Lanka a historic opportunity to address the grave human rights violations that have wracked its past, to pursue accountability and institutional reform, to ensure truth, justice and redress to many thousands of victims, and to lay the basis for long-term reconciliation and peace. Sri Lanka has, however, had such opportunities in the past, and the findings of the OHCHR investigation highlight the need for political courage and leadership to tackle comprehensively the deep-seated and institutionalized impunity that generates the risk of such violations being repeated.

II. Engagement of the Office of the High Commissioner and the special procedures

7. When the Human Rights Council adopted resolution 25/1, the Government of Sri Lanka "categorically and unreservedly rejected" it and refused to engage "in any related process". Former government ministers and officials repeatedly criticized and indeed vilified the OHCHR investigation in public and, more seriously, resorted to an unrelenting campaign of intimidation and harassment against victims, witnesses and representatives of civil society who might seek to provide information to OHCHR.

8. Since January 2015, the tenor of the Government's engagement with OHCHR has changed markedly. Although the new Government did not change its stance on cooperation with the investigation, nor admit the investigation team to the country, it engaged more constructively with the High Commissioner and OHCHR on possible options for an accountability and reconciliation process.

9. The Government also invited the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to make a technical visit from 30 March to 3 April 2015. The Special Rapporteur stressed the importance of developing a comprehensive State policy on transitional justice through broad public consultation and participation, particularly of persons affected by violations.

10. The Working Group on Enforced or Involuntary Disappearances was also invited to visit Sri Lanka from 2 to 12 August 2015, but was requested to postpone its visit when these dates fell close to the parliamentary elections. The Working Group's visit has now been confirmed for November 2015.

III. Human rights and related developments

11. The presidential election of 8 January 2015 marked a watershed in the political environment in Sri Lanka. The common opposition candidate, Mathiripala Sirisena, defeated the incumbent President Mahinda Rajapaksa with the support of a broad coalition derived from all ethnic communities and spread over the ideological spectrum. A new Cabinet was formed with the former opposition leader, Ranil Wickremesinghe, as Prime Minister.

12. The manifesto of the new Government included a 100-day programme of constitutional reform and other measures, which culminated in the passage of the nineteenth amendment to the Constitution limiting the powers of the executive presidency, re-introduced limits to presidential terms and restored the Constitutional Council, which makes recommendations on appointments to the judiciary and independent commissions. The Chief Justice, who was controversially impeached in January 2013, was briefly reinstated before the senior-most judge on the bench was appointed as her successor.

13. Parliamentary elections were subsequently held on 17 August 2015. The United National Front for Good Governance, the coalition of parties that had governed since January 2015, won the largest number of seats, and a new Cabinet was formed on 4 September 2015.

14. Since January 2015 there has been a significant opening of space for freedom of expression, at least in Colombo, although reports of surveillance, interference and harassment of human rights defenders continued to be received at the district level. On 16 January, the Government lifted restrictions on access by journalists to the northern region.

15. While President Sirisena appointed new civilian governors for both the Northern and Eastern Provinces, and the major security checkpoint leading to the North was removed in August 2015, the Government is still to embark on any comprehensive process of demilitarization. Local civil society sources recorded 26 cases of harassment and intimidation by military and intelligence services in the North and East during the period from January to August 2015. This figure highlights the reality that the structures and institutional cultures that created the repressive environment of the past remain in place and will require much more fundamental security sector reform.

16. Six years after the end of the war, many displaced populations have yet to achieve durable solutions, particularly with regard to livelihoods. One major continuing problem is the military occupation of private land, although the Government has proceeded with some land releases in Thellipallai and Kopai in the North and in Sampur in the East.

17. Land issues have been further complicated by secondary occupation by civilians; loss, destruction and damage to land documents; competing claims; landlessness; and unregularized land claims. Care must also be taken to ensure that land distribution does not exacerbate existing intra- and inter-community tensions, since land disputes have become increasingly politicized and ethnicized in return areas.

18. Women head nearly 60,000 households in the Northern Province.[1] Owing to food insecurity, rising inflation and lack of livelihood opportunities, such households are pushed further into debt, thereby increasing their vulnerability to exploitation. In the militarized context in conflict-affected areas, they are extremely vulnerable to sexual harassment, exploitation and violence.

19. The Government has been slow to clarify the number and identity of detainees still held under the Prevention of Terrorism Act and emergency regulations. At the time of writing, the Government had reportedly acknowledged 258 remaining detainees: 60 had not been charged; 54 had a prior conviction; while the remaining cases were pending. Reports have continued to emerge about the existence of secret and unacknowledged places of detention, which require urgent investigation.

20. The Prevention of Terrorism Act, which has long provided a legal context for arbitrary detention, unfair trials and torture, remains in force (see CCPR/C/LKA/CO/5, para. 11). According to local civil society sources, from January to August 2015, 19 people were arrested under the Act, of whom 12 remain in detention. Although the Government has engaged in dialogue with Tamil diaspora groups, it has not yet taken steps to delist the numerous Tamil diaspora organizations and individuals proscribed under the Act in March 2013.

21. Torture and sexual violence remain a critical concern, both in relation to the conflict and in the regular criminal justice system. A non-governmental organization that provides victims with medical services has highlighted six cases since the change of Government in 2015. A total of 37 per cent of the cases documented in its report[2] concerned individuals who had returned to Sri Lanka after the conflict, a few of them rejected asylum seekers.

22. During the period between March 2014 and August 2015, one non-governmental organization reported 112 incidents of hate speech against the Muslim community, 22 since January 2015.[3] During the same period, Christian groups reported 126 incidents targeting

[1] Household Income and Expenditure Survey 2012/13, preliminary report, Department of Census and Statistics, Ministry of Finance and Planning, Sri Lanka.

[2] Freedom from Torture, "Tainted Peace: Torture in Sri Lanka since May 2009", August 2015.

[3] See Secretariat for Muslims (http://secretariatformuslims.org/).

Christians and religious sites, 57 since January 2015.[3] In April 2015, the Government announced plans to revise the Penal Code to criminalize hate speech; these amendments have yet to be presented.

23. As at August 2015, there were no prosecutions in relation to attacks by the Buddhist group Bodu Bala Sena on the Muslim community in Aluthgama in June 2014, where four people were reportedly killed and 80 injured.

IV. Principal findings of the investigation

24. The section below summarizes the principal findings established by OHCHR as a result of its investigation and on the basis of the information in its possession. The sheer number of allegations, their gravity, recurrence and the similarities in their modus operandi, as well as the consistent pattern of conduct they indicate, all point to system crimes. While it has not always been possible to establish the identity of those responsible for serious alleged violations, these findings demonstrate that there are reasonable grounds to believe that gross violations of international human rights law, serious violations of international humanitarian law and international crimes were committed by all parties during the period under review. Indeed, if established before a court of law, many of the allegations may, depending on the circumstances, amount to war crimes if a nexus is established with the armed conflict and/or crimes against humanity if committed as part of a widespread or systematic attack against a civilian population. In some of the cases, the alleged acts were apparently committed on discriminatory grounds.

A. Unlawful killings

25. On the basis of the information obtained by the investigation team, there are reasonable grounds to believe the Sri Lankan security forces and paramilitary groups associated with them were implicated in unlawful killings carried out in a widespread manner against civilians and other protected persons. Tamil politicians, humanitarian workers and journalists were particularly targeted during certain periods, although ordinary civilians were also among the victims. There appears to have been discernible patterns of killings, for instance in the vicinity of security force checkpoints and military bases, and also of individuals while in the custody of security forces. If established before a court of law, these may, depending on the circumstances, amount to war crimes and/or crimes against humanity.

26. The investigation team also gathered information that gives reasonable grounds to believe that the Liberation Tigers of Tamil Eelam (LTTE) also unlawfully killed Tamil, Muslim and Sinhalese civilians perceived to hold sympathies contrary to LTTE. LTTE targeted rival Tamil political parties, suspected informers and dissenting Tamils, including political figures, public officials and academics, as well as members of rival paramilitary groups. Civilians were among the many killed or injured in indiscriminate suicide bombings and claymore mine attacks carried out by LTTE. Depending on the circumstances and if confirmed by a court of law, these may amount to war crimes and or crimes against humanity.

27. The team also investigated allegations of extrajudicial executions of identified LTTE cadres and unidentified individuals on or around 18 May 2009, some of whom were known

[3] See National Christian Evangelical Alliance incident reports (http://ncesl.org/category/incident-reports/).

to have surrendered to the Sri Lankan military. Although some facts remain to be established, on the basis of witness testimony as well as photographic and video imagery, there appears to be sufficient information in several cases to indicate that they were killed after being taken into custody. Depending on the circumstances and if confirmed by a court of law, many of the cases described in the report may amount to war crimes and/or crimes against humanity.

B. Violations relating to the deprivation of liberty

28. The investigation team documented long-standing patterns of arbitrary arrest and detention by government security forces, and of abductions by paramilitary organizations linked to them, which often reportedly led to enforced disappearances and extrajudicial killings.

29. The typical modus operandi involved the arbitrary arrest or abduction of individuals by the security forces, sometimes with the assistance of paramilitary group members operating in unmarked "white vans" that were reportedly able to pass security checkpoints or to enter security force bases.

30. These violations were and still are facilitated by the extensive powers of arrest and detention provided for in the Prevention of Terrorism Act still in force, and by the emergency regulations that were in force until 2011. Such cases of unlawful and arbitrary arrest and detention are clearly in violation of the State's obligations under international human rights law. Depending on the circumstances and if confirmed by a court of law, these violations may amount to war crimes and/or crimes against humanity.

C. Enforced disappearances

31. During the course of its investigation, the team reviewed reliable information on hundreds of cases of enforced disappearance arising during the period under review in various parts of the country, with particular prevalence in the Northern and Eastern Provinces. Furthermore, the mass detention regime after the end of hostilities also led to enforced disappearances.

32. On the basis of the information available, the team has reasonable grounds to believe that the Sri Lankan authorities have, in a widespread and systematic manner, deprived a considerable number of victims of their liberty, and then refused to acknowledge the deprivation of liberty or concealed the fate and whereabouts of the disappeared person. This, in effect, removed these persons from the protection of the law and placed them at serious risk. Family members of the disappeared persons were also subjected to reprisals and denied the right to an effective remedy, including the right to the truth.

33. There are reasonable grounds to believe that enforced disappearances may have been committed as part of a widespread and systematic attack against the civilian population, given the geographical scope and time frame in which they were perpetrated, by the same security forces and targeting the same population. In particular, there are reasonable grounds to believe that those who disappeared after handing themselves over to the army at the end of the conflict were deliberately targeted because they were or were perceived to be affiliated with LTTE forces.

D. Torture and other forms of cruel, inhuman or degrading treatment

34. The investigation team documented the use of torture by the Sri Lankan security forces, particularly in the immediate aftermath of the armed conflict, when former LTTE members and civilians were detained en masse. This conduct followed similar patterns by a range of security forces in multiple facilities, including army camps, police stations and "rehabilitation camps", as well as in secret, unidentified locations.

35. On the basis of the information obtained by the team, there are reasonable grounds to believe that acts of torture were committed on a widespread or systematic scale. Such acts breach the absolute prohibition of torture and the State's international treaty and customary obligations. If established before a court of law, these acts of torture may, depending on the circumstances, amount to crimes against humanity and/or war crimes.

E. Sexual and gender-based violence

36. The information gathered by the investigation team gave reasonable grounds to believe that rape and other forms of sexual violence by security forces personnel was widespread against both male and female detainees, particularly in the aftermath of the armed conflict. The patterns of sexual violence appear to have been a deliberate means of torture to extract information and to humiliate and punish persons who were presumed to have links with LTTE.

37. Owing in particular to the fear of reprisals, the stigma and trauma attached, and the other constraints its investigation faced, the team was unable to assess fully the scale of the sexual violence used against those detained. The team nevertheless considers that, on the basis of the information it gathered, there are reasonable grounds to believe that violations of international human rights law and international humanitarian law relating to sexual violence were committed by government security forces, and that some of these acts may amount to war crimes and crimes against humanity.

F. Abductions and forced recruitment

38. The investigation team gathered information that reflected a pattern of abductions leading to the forced recruitment of adults by LTTE until 2009. The forced recruits were obliged to perform both military and support functions and were often denied contact with their families. Towards the end of the conflict, abductions leading to forced recruitment became more prevalent. Victims and families who tried to resist were physically mistreated, harassed and threatened.

39. In the view of the team, abductions leading to forced recruitment and forced labour were in contravention of common article 3 of the Geneva Conventions and of the obligations under international humanitarian law of LTTE to treat humanely persons taking no direct part in hostilities and those placed hors de combat. In cases in which the movement of those forcibly recruited was severely restricted, the investigation team is of the view that this may amount to a deprivation of liberty. If established by a court of law, these violations may, depending on the circumstances, amount to war crimes and/or crimes against humanity.

G. Recruitment of children and their use in hostilities

40. The investigation team documented extensive recruitment and use of children in armed conflict by LTTE over many years, which intensified during the last few months of

the conflict, as did reports of recruitment of children under the age of 15. It also gathered information on child recruitment by the Tamil Makkal Viduthalai Pulikal (TMVP)/Karuna Group after its split from LTTE in 2004. Recruitment of children is a violation of the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict, and could also constitute a war crime if proven in a court of law.

41. On the basis of the information gathered by the investigation team, there are reasonable grounds to believe that government security forces may have known that the Karuna Group recruited children in areas under its control. This indicates that the Government may also have violated the Convention on the Rights of the Child and the Optional Protocol thereto on the involvement of children in armed conflict to which it is a party, in particular to ensure the protection and care of children affected by armed conflict. The High Commissioner also notes the State's failure to date to prosecute those responsible, including individuals widely suspected of child recruitment, some of whom have since been appointed to public positions.

H. Impact of hostilities on civilians and civilian objects

42. On the basis of the information in the possession of the investigation team, there are reasonable grounds to believe that many of the attacks reviewed in the present report did not comply with the principles on the conduct of hostilities, notably the principle of distinction.

43. While it may have been permissible for the security forces to target any military objective located in the no-fire zones declared by the Government, these attacks were subject to the rules on conduct of hostilities, including the obligation to take all feasible precaution to avoid or to minimize incidental loss of civilian lives or damage to civilian objects. The presence of large numbers of civilians, including many children, some of them living in flimsy shelters without access to bunkers, constituted an obvious risk that substantial loss of civilian lives and damage to civilian objects in the no-fire zones might ensue as a result of an attack.

44. The investigation team recognized the complexities inherent in conducting military operations against legitimate military targets in or near densely populated areas. Nevertheless, the presence of LTTE cadres participating in hostilities from within the predominantly civilian population did not change the character of the population, nor did it affect the protection that should be afforded to civilians under international humanitarian law. It is important to recall that the obligations of a party to an armed conflict under international humanitarian law are not conditioned on reciprocity. Violations attributable to one of the parties do not justify lack of compliance on the part of the other. While the investigation was not conclusive on the proportionality assessment for each of the incidents reviewed in the present report, the team believes that this matter should be investigated.

45. The team noted with grave concerns the repeated shelling of hospitals in the Vanni. Hospitals and other medical units and personnel enjoy special protection under international humanitarian law, and cannot be made the object of attack. The protection they should enjoy does not cease unless these are used to commit hostile acts, outside their humanitarian function. The recurrence of such shelling despite the fact that the security forces were aware of the exact location of hospitals raises serious doubt that these attacks were accidental. Other civilian facilities in the no-fire zones, in particular humanitarian facilities and food distribution centres, were also affected. The information available to the team indicated that in none of the incidents reviewed were there any grounds that could have reasonably led the security forces to determine that the facilities were being used for

military purposes; they therefore maintained their civilian character and should not have been directly targeted. Directing attacks against civilian objects and/or against civilians not taking direct part in hostilities is a serious violation of international humanitarian law and, depending on the circumstances, may amount to a war crime.

46. Another concern is that security forces employed weapons that, when used in densely populated areas, are likely to have indiscriminate effects. This concern is strengthened by the fact that the security forces reportedly had the means to use more accurate weapons and munitions so as to better respect their legal obligations, notably the requirements of distinction and precaution. In addition, the security forces publicly declared that they had means at their disposal, such as real-time images from drones, which would have helped them accurately target military objectives.

47. Another precautionary measure – circumstances permitting – is to issue effective warnings when attacks are likely to affect civilians, leaving them adequate time to evacuate before military operations commence. The team obtained no information indicating that any specific warnings were issued to the civilian population in no-fire zones informing them that military operations were imminent.

48. The investigation team did not find information suggesting that hospitals and other civilian facilities, including those of the United Nations, were used by LTTE for military purposes. The investigations did, however, indicate that LTTE repeatedly constructed military fortifications and positioned artillery and other weaponry in close proximity (and often adjacent) to civilian areas, including humanitarian and medical facilities and the surrounding areas of with a high concentration of displaced persons in no-fire zones, thereby exposing the civilian population to the dangers of the military operations taking place around them, including by placing civilian lives at increased risk from strikes by the Sri Lankan Army. There are therefore reasonable grounds to believe that the conduct of the LTTE violated its obligations under international humanitarian law to take all feasible measures to protect the civilian population and civilian objects against the effects of attacks.

I. Control of movement

49. The findings made by the investigation team indicate that there are reasonable grounds to believe that LTTE had a clear high-level policy of preventing civilians from leaving the Vanni, thereby unlawfully interfering with their freedom of movement. Findings also showed that the policy hardened in January 2009, although the specific instructions on how LTTE cadres should prevent anyone from leaving have yet to be clarified. Nevertheless, the information gathered indicated that a number of individuals, including several children, were shot dead, injured or beaten by LTTE cadres as they tried to leave, in contravention of their right to life and physical integrity. These acts may amount to direct attacks on civilians not taking direct part in hostilities, in violation of international humanitarian law. If established before a court of law, and depending on the circumstances, such conduct may amount to a war crime.

50. By compelling civilians to remain within the area of active hostilities, LTTE also violated its obligation under international humanitarian law to take all feasible measures to protect the civilian population under its control against the effects of attacks from the security forces.

J. Denial of humanitarian assistance

51. The investigation team found that the Government of Sri Lanka placed considerable restrictions on freedom of movement of humanitarian personnel and on humanitarian activities in the Vanni. These restrictions had an impact on the ability of humanitarian organizations and personnel to exercise their functions effectively and to ensure access to relief of civilians in need. According to rule 56 of customary international humanitarian law, such restrictions may only be justified by imperative military necessity.

52. There are reasonable grounds to believe that LTTE also failed to respect its obligations to respect and protect humanitarian relief personnel and not to restrict their freedom of movement.

53. The team found reasonable grounds to believe that the Government knew or had reasons to know the real humanitarian needs of the civilian populations in the concerned areas, including from its own agents on the ground, and nonetheless imposed severe restrictions on the passage of relief and the freedom of movement of humanitarian personnel. This conduct apparently deprived the civilian population in the Vanni of basic foodstuffs and medical supplies essential to survival. If established by a court of law, these acts and omissions point to violations of international humanitarian law, which, depending on the circumstances, may amount to the use of starvation of the civilian population as a method of warfare, which is prohibited by rule 53 of customary international humanitarian law. Such conduct, if proven in a court of law and depending on the circumstances, may constitute a war crime.

K. Screening and deprivation of liberty of internally displaced persons

54. The investigation team believes that the internally displaced persons held in Manik Farm and other closed camps were deprived of their liberty for periods far beyond what would have been permissible under international law. Moreover, the material conditions in these closed camps amounted to violations of the rights to health and to an adequate standard of living, including food, water, housing and sanitation. Depending on the circumstances, such conditions may also amount to inhumane and degrading treatment as defined in international human rights law.

55. On the basis of the information in the possession of the team, there are reasonable grounds to believe that internally displaced persons IDPs were treated as suspects and detained because of their Tamil ethnicity and because they had come from territory controlled by LTTE. This conduct may amount to discrimination under international human rights law and, if established by a court of law, may amount to the crime against humanity of persecution.

V. Steps towards accountability and reconciliation

56. As demonstrated in previous reports submitted by OHCHR to the Human Rights Council, recent years have witnessed a total failure of domestic mechanisms credibly to investigate, establish the truth, ensure accountability and provide redress to victims of the serious human rights violations and abuses described above.

57. In the course of its investigation, the team obtained access to the unpublished reports of several domestic investigations, including the Udalagama Commission of 2006 and the Army Court of Inquiry of 2012. The reports confirmed the concerns of OHCHR with regard

to their lack of independence and follow-up to their recommendations highlighted in previous reports of OHCHR (see A/HRC/25/23).

58. Since January 2015, President Sirisena and other government figures have struck a very different tone on reconciliation in public statements. On Independence Day, 4 February, the Government issued a special "declaration of peace" in three languages in which it expressed sympathy and regret for all the victims of the 30-year armed conflict, and pledged to advance "national reconciliation, justice and equality for all citizens".

59. By a cabinet decision dated 25 March 2015, the Government established a new Office of National Unity and Reconciliation, headed by former President Chandrika Bandaranaike Kumaratunga, with a mandate to drive progress on pending issues such as the release of detainees and civilian land occupied by the military. The Government also continued to place emphasis on implementation of the recommendations made by the Lessons Learnt and Reconciliation Commission.

A. Presidential Commission to Investigate into Complaints regarding Missing Persons

60. At the time of writing, there were indications that the Presidential Commission to Investigate into Complaints regarding Missing Persons appointed by the previous Government had received a further extension to complete its work,[1] despite widespread concerns raised about its credibility and effectiveness. In June 2015, two additional Commissioners were appointed to expedite the hearing of cases. In July, the Government also announced the appointment of a special investigative team to expedite investigation into some cases, although its status is not known.

61. As at 30 June, the Commission had received a total of 16,826 complaints of missing civilians and 5,000 complaints relating to missing members of the security forces; 2,200 complainants were subsequently invited to give testimony at 47 public hearings in different districts.

62. Reports from independent observers and organizations working with families of the disappeared continued to criticize the lack of transparency and public information, the conduct of proceedings, and intimidation and harassment of family members by military and intelligence officials (see A/HRC/27/CRP.2). These concerns were raised with the Government by the Working Group on Enforced or Involuntary Disappearances in February 2014 (see A/HRC/WGEID/102/1, paras. 128-138 and A/HRC/WGEID/103/1, para. 157), although they were largely rejected at the time.

63. The Commission presented its first interim report to the President on 10 April 2015 and is reported to have submitted its second; neither report has been published. OHCHR did, however, obtained access to a copy of the first report, which sheds some light on the work of the Commission. The Commission's analysis of written complaints shows that the security forces accounted for 19 per cent of them, LTTE for 17 per cent, and persons or groups unknown for more than 50 per cent. A larger proportion of LTTE cases appear, however, to have been invited for the public hearings, raising questions of selectivity. It also reported complaints received against paramilitary groups such as the Tamil Makkal Viduthalai Pulikal /Karuna Group and the Eelam People's Democratic Party.

[1] In 2014, the beginning of the period covered by the Commission was extended back from 1 June 1990 to 1 January 1983.

64. In its interim report, the Commission recommended further investigation of a number of cases. Significantly, it highlighted 10 cases in which it had identified by name or rank members of the security forces responsible for abductions or disappearances; the status of any further investigation is, however, unknown.

B. Emblematic cases

65. A Committee appointed by the new Government to re-investigate the death of 27 prisoners during a security operation to control a riot at Welikada prison in November 2012 (see A/HRC/25/23, para. 24) found that a number of those killed or injured had not been involved in the riot, and recommended further criminal investigation and compensation.

66. In the case of the killing of protestors by army personnel at Weliweriya in August 2013 (see A/HRC/25/23, para. 23), an investigation conducted by the Human Rights Commission of Sri Lanka concluded in a report published in 2015 that the deaths of three people, the injury of 36, and the destruction of property indicated the security forces had used excessive force. It also noted the presence of senior officers at the scene, which suggested that the shooting could not have taken place without orders.

67. In a noteworthy development, on 25 June, the Colombo High Court found a former army staff sergeant guilty of the murder of eight Tamil civilians at Mirusuvil, Jaffna District, in 2000; four others charged were acquitted. This is a rare case of a conflict-related violation being successfully prosecuted, and a reminder of the many other such cases have stalled or are pending at various stages of proceedings. While welcome,[6] the case highlights the systemic problems of delays in the Sri Lankan judicial system.

68. With regard to the killing of five students at Trincomalee beachfront in January 2006 and of 17 humanitarian workers of the non-governmental organization Action Contre la Faim in Muttur in August 2006, the Government reported having intensified its investigations, but highlighted the difficulties involved in summoning or interviewing potential witnesses now living abroad.[7] These cases highlight the unfortunate lack of confidence that witnesses have in the State's domestic process and the absence of witness protection.

69. During the first weeks in office of the new Government, some ministers made public statements about reopening investigations into other prominent cases of human rights violations. In March 2015, three navy personnel and a former police officer were arrested and are on remand in relation to the killing of Nadarajah Raviraj, a Member of Parliament for the Tamil National Alliance, in November 2006, while a fourth suspect is being sought abroad.

70. In August 2015, police announced that they had arrested several military personnel, including two lieutenant colonels, and two former LTTE cadres in relation to the disappearance of journalist and cartoonist Prageeth Eknaligoda.[8] According to State media,

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[6] The High Commissioner points out his opposition to the death penalty handed down in the case, and the current status of Sri Lanka as a de facto abolitionist State.

[7] According to the Government, in the case of Action Contre la Faim, the Criminal Investigation Department has recorded statements of 18 military personnel since January 2015 and a further 22 are to be interviewed. The Department wishes to interview two key witnesses believed to be living in France. In the Trincomalee case, the prosecution has presented the depositions of 25 witnesses, while eight other witnesses are being sought from overseas. The next hearing in the case is scheduled for 7 December 2015.

[8] "CID arrests four Army officers", *Daily News*, 25 August 2015.

the investigation has revealed that Eknaligoda was taken to an army camp in Girithale in North Central province following his abduction on 24 January 2010.[9]

71. The above developments are most welcome, but it is important that the momentum in these cases be sustained and broadened to the many other criminal cases languishing before the courts. The High Commissioner recalls that breakthroughs of this kind have been reported before other sessions of the Human Rights Council, only to stall later on.

C. Mass graves

72. In previous reports, OHCHR highlighted the pending investigations into mass graves that had been discovered in different parts of the country. Developments in 2015 in the investigation into gravesites at Mannar and Matale have highlighted ongoing forensic challenges and possible tampering with evidence.

73. In recent years, many other graves have been found in the former conflict zone, often of persons who died in shelling during the final stages of the conflict. This fact highlights the critical need for greater local capacity and international technical assistance in the field of forensics, particularly forensic anthropology and archaeology. Ensuring the preservation and investigation of sites will be critical to any future criminal investigation and to the identification of missing persons for their families.

VII. Looking ahead

74. The new Government has pledged to deal with accountability issues "within the country's legal framework".[10] Much of the debate has turned on the type of mechanisms that achieve this, and whether they should be domestic, international or a hybrid of the two. As the Human Rights Council stressed in its resolution 25/1, however, what is needed is a "comprehensive approach to transitional justice incorporating the full range of judicial and non-judicial measures", including individual prosecutions, reparations, truth-seeking, institutional reform and vetting of public employees and officials.

75. The commitment made by the new Government to pursue accountability through a domestic process is commendable, particularly in a context where some political parties and sections of the military and society remain deeply opposed. The unfortunate reality is, however, that the State's criminal justice system is not yet ready or equipped to conduct an independent and credible investigation into the allegations reported by the investigation team,[11] or to hold accountable those responsible for such violations, as requested by the Council in resolution 25/1.

76. First and foremost is the absence of any reliable system for victim and witness protection, particularly in a context where the risk of reprisals is very high. In February 2015, the Government finally passed a long-pending law on victim and witness protection, although no concrete steps have yet been taken to render it operative. OHCHR has previously highlighted various shortcomings in the law that could compromise the independence and effectiveness of the new system (see A/HRC/27/CRP.2, para. 25). Much will depend on the integrity of appointments to the new witness protection authority, the vetting of police assigned to it, and the resources allocated to make it functional.

[9] "Sgt Major confesses to grilling Eneligoda" *Daily News*, 11 August 2015.

[10] See the election manifesto of the United National Front for Good Governance, available from www.colombotelegraph.com/wp-content/uploads/2015/08/Election-held-UNP.pdf.

[11] See A/HRC/30/CRP.2.

77. Second is the inadequacy of the State's domestic legal framework to deal with international crimes of this magnitude. Sri Lanka has not acceded to several key instruments, notably the Additional Protocols to the Geneva Conventions, in particular Additional Protocol II, the International Convention on the Protection of All Persons from Enforced Disappearance and the Rome Statute of the International Criminal Court. It does not have laws criminalizing enforced disappearances, war crimes, crimes against humanity or genocide. Its legal framework does not allow individuals to be charged with different forms of liability, in particular command or superior responsibility.

78. In the past, when Sri Lanka has prosecuted conflict-related cases, it has relied on offences in regular criminal law, such as murder. This approach fails to recognize the gravity of the crimes committed, their international character, or to duly acknowledge the harm caused to the victims. It also constrains and undermines prosecution strategies, as it does not follow the chain of responsibility and prosecute those who planned, organized or gave the orders for what may be system crimes.

79. Effective prosecution strategies for large-scale crimes, such as those described by the investigation team,[12] focus on their systemic nature and their planners and organizers. The presumption behind such "system crimes" is that they are generally of such a scale that they require some degree of organization to perpetrate them. Even sophisticated legal systems like those in Sri Lanka – which may be well suited to deal with ordinary crimes – may lack the capacity to address system crimes and to bring effective remedy to their victims. This challenge is even greater in an environment where the criminal justice system remains vulnerable to interference and influence by powerful political, security and military actors.

80. Judicial accountability should also be accompanied by broader transitional justice measures, including truth-seeking and reparations, to ensure that the right of victims to redress is realized. In this regard, it will be important that any accountability process in Sri Lanka examine the entire period of conflict and insurgencies dating back to at least the 1970s, not just the last years of the armed conflict. This will also pre-empt the temptation for accountability measures to be driven by political considerations.

81. The design of any truth-seeking and accountability mechanisms must be pursued through a process of genuine, informed and participatory consultation, especially with victims and their families. New mechanisms should not be established under the Commissions of Inquiry Act, which has systematically failed to deliver results; new, purpose-specific legislation will therefore be required.

82. The third challenge is the degree to which the State's security sector and justice system have been distorted and corrupted by decades of emergency, conflict and impunity. For years, political interference by the executive with the judiciary has become routine, as demonstrated in many of the cases investigated in the present report. The independence and integrity of key institutions such as the Attorney General's Office and the Human Rights Commission remain compromised.

83. The security forces, police and intelligence services have enjoyed near total impunity and have not undergone any significant downsizing or reform since the armed conflict. The Prevention of Terrorism Act and the Public Security Ordinance Act both remain in force. The military retains an oppressive presence in the war-affected areas of the north and east, still occupying extensive private land, expanding into commercial economic activities and maintaining a culture of surveillance and harassment of the local population and civil society.

[12] Ibid.

84. Without far-reaching institutional and legal reform, there can be no guarantee of non-recurrence. Sadly, the history of Sri Lanka includes moments where Governments pledged to turn the page and end such practices as enforced disappearances, but the failure to address impunity and root out the deep structures that had perpetrated such abuses meant the "white vans" could be reactivated when needed.

85. Against this backdrop, the High Commissioner believes that the Government of Sri Lanka will need to embark on fundamental reforms of the security sector and justice system, including a full-fledged vetting process to remove from office security forces personnel and public officials suspected of involvement in human rights violations, before it can hope to achieve a credible domestic accountability process and hope to achieve reconciliation.

VIII. Conclusions and recommendations

86. **The findings of the OHCHR investigation contained in the present report were born out of the past failure of the Government of Sri Lanka to address accountability for the most serious human rights violations and crimes. Ending the impunity enjoyed by the security forces and associated paramilitary groups, and holding to account surviving members of LTTE, will require political will and concerted efforts to ensure that these violations and crimes do not recur.**

87. **The commitments made by the new Government in this respect are welcome, but it needs to convince a very sceptical audience – Sri Lankan and international – that it is determined to show results. Prosecuting a few emblematic cases will not be sufficient; Sri Lanka needs to address the patterns of serious human rights violations and other international crimes that have caused such suffering for all communities over decades if it is to prevent them from haunting its future.**

88. **The High Commissioner remains convinced that, for accountability to be achieved in Sri Lanka, it will require more than a domestic mechanism. Sri Lanka should draw on the lessons learned and good practices of other States that have succeeded with hybrid special courts, integrating international judges, prosecutors, lawyers and investigators. Such a mechanism will be essential to give confidence to all Sri Lankans, in particular the victims, in the independence and impartiality of the process, particularly given the politicization and highly polarized environment in Sri Lanka. OHCHR stands ready to continue to provide its advice and technical assistance in the design of such a mechanism.**

89. **The High Commissioner also believes that the Human Rights Council has played – and should continue to play – a critically important role in encouraging progress on accountability and reconciliation in Sri Lanka. As the process now moves into a new stage, he urges Council members to sustain their monitoring of developments in Sri Lanka with a view to further actions that may be required at the international level should concrete results not be achieved.**

90. **In particular, the High Commissioner wishes to highlight the following recommendations below.**[1]

[1] See also A/HRC/30/CRP.2.

A. Government of Sri Lanka

1. General

91. The High Commissioner recommends that the Government of Sri Lanka:

(a) Set up a high-level executive group to develop a coordinated, time-bound plan and oversee progress in implementing the recommendations contained in the present and previous reports of the High Commissioner submitted to the Human Rights Council, as well as relevant outstanding recommendations of the Lessons Learnt and Reconciliation Commission and past commissions of inquiry;

(b) Invite OHCHR to establish a full-fledged country presence to monitor the situation of human rights, advise on implementation of the recommendations made by the High Commissioner and the Human Rights Council in its resolutions and to provide technical assistance;

(c) Initiate genuine consultations on transitional justice, in particular truth-seeking and accountability mechanisms, reparations and memorialization, with the public, victims and witness groups, civil society and other stakeholders; these should be accompanied by public education programmes that ensure informed participation in the process;

(d) Invite the Special Rapporteur on truth, justice, reparations and guarantees of non-recurrence to continue his engagement in accompanying and providing advice in this process, and invite other relevant Special Representatives of the Secretary-General and special procedure mandate holders, in particular the Special Rapporteur on extrajudicial, summary or arbitrary executions and the Special Rapporteur on torture and other cruel, inhuman and degrading treatment or punishment, to make early country visits.[14]

2. Institutional reforms

(e) Through the Constitutional Council, appoint qualified new members to the Human Rights Commission of Sri Lanka of the utmost independence and integrity, and review legislation to strengthen the Commission's independence and its capacity to refer cases to the courts;

(f) Issue clear, public and unequivocal instructions to all branches of the military and security forces that torture, rape, sexual violence and other human rights violations are prohibited and that those responsible, both directly or as commander or superior, will be investigated and punished; and order an end to all surveillance, harassment and reprisals against human rights defenders;

(g) Develop a full-fledged vetting process respecting due process to remove from office military and security force personnel and any other public official where there are reasonable grounds to believe that they have been involved in human rights violations;

(h) Prioritize the return of private land that has been occupied by the military and end military involvement in civilian activities;

[14] See also A/HRC/30/CRP.2, p. 248, recommendations

(i) Take immediate steps to identify and disarm groups affiliated with political parties, and sever their linkages with the security forces, intelligence services and other government authorities;

(j) Initiate a high-level review of the Prevention of Terrorism Act and its regulations and the Public Security Ordinance Act with a view to their repeal and the formulation of a new national security framework fully compliant with international law;

3. Justice

(k) Review the Victim and Witness Protection Act with a view to incorporating better safeguards for the independence and effectiveness of the witness protection programme in accordance with international standards; ensure the independence and integrity of those appointed to the Witness Protection Authority and that the police personnel assigned to the programme are fully vetted; and ensure adequate resources for the witness protection system;

(l) Accede to the International Convention on the Protection of All Persons from Enforced Disappearance, the Additional Protocols to the Geneva Conventions, and the Rome Statute of the International Criminal Court;

(m) Enact legislation to criminalize war crimes, crimes against humanity, genocide and enforced disappearances without statutes of limitation; and enact various modes of criminal liability, in particular command or superior responsibility;

(n) Adopt specific legislation establishing an ad hoc hybrid special court, integrating international judges, prosecutors, lawyers and investigators, mandated to try war crimes and crimes against humanity, with its own independent investigative and prosecuting organ, defence office and witness and victims protection programme, and provide it with the resources necessary for it to be able try those responsible to promptly and effectively;

(o) Carry out a comprehensive mapping of all criminal investigations, habeas corpus and fundamental rights petitions relating to serious human rights violations, and of the findings of all commissions of inquiries where they have identified specific cases, and refer these cases to the special court upon its establishment;

(p) Reinforce the forensic capacity of the judiciary and ensure that it is adequately resourced, including for DNA testing, forensic anthropology and archaeology;

(q) Review all cases of detainees held under the Prevention of Terrorism Act and either release them or immediately bring them to trial; and review the cases of those convicted under the Act and serving long sentences, particularly where convictions were based on confessions extracted under torture;

4. Truth/right to know

(r) Dispense with the current Presidential Commission on Missing Persons and transfer its cases to a credible and independent institution developed in consultation with families of the disappeared;

(s) Develop a central database of all detainees, with independent verification, where relatives may obtain information of the whereabouts of family members detained, and publish a list of all detention centres;

(t) Publish all unpublished reports of the many human rights-related commissions of inquiry, the Presidential Commission on the Missing and the Army Court of Inquiry into civilian casualties;

(u) Develop a comprehensive plan/mechanism for preserving all existing records and documentation relating to human rights violations, whether held by public or by private institutions;

5. Reparations

(v) Develop a national reparations policy that takes into account the specific needs of women and children, and make adequate provision from the State budget;

(w) Strengthen programmes of psychosocial support for victims.

B. United Nations system and Member States

92. The High Commissioner recommends that the United Nations system and Member States:

(a) Provide technical and financial support for the development of transitional justice mechanisms, provided that they meet international standards; and set up a coordination mechanism among donors in Sri Lanka to ensure focused and concerted efforts to support the transitional justice process;

(b) Apply stringent vetting procedures to Sri Lankan police and military personnel identified for peacekeeping, military exchanges and training programmes;

(c) Wherever possible, in particular under universal jurisdiction, investigate and prosecute those responsible for such violations as torture, war crimes and crimes against humanity;

(d) Ensure a policy of non-refoulement of Tamils who have suffered torture and other human rights violations until guarantees of non-recurrence are sufficient to ensure that they will not be subject to further abuse, in particular torture and sexual violence;

(e) Continue to monitor human rights developments and progress towards accountability and reconciliation through the Human Rights Council; if insufficient progress is made, the Council should consider further international action to ensure accountability for international crimes.

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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Full-day meeting on the theme, "Towards better investment in the rights of the child"

Report of the United Nations High Commissioner for Human Rights

Summary

The present report is submitted pursuant to Human Rights Council resolution 25/6, in which the Council decided to focus its 2015 full-day meeting on the theme, "Towards better investment in the rights of the child" and requested the United Nations High Commissioner for Human Rights to prepare a summary of the meeting. Accordingly, the present report contains a summary of the discussions held on 12 March 2015 during the annual full-day meeting. It focuses on existing norms and standards on this area, as well as key challenges in planning, mobilizing, allocating and spending public resources to realize children's rights.

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I. Background

1. In its resolution 7/29, the Human Rights Council affirmed its commitment to effectively integrate the rights of the child in its work and that of its mechanisms in a regular, systematic and transparent manner, taking into account specific needs of boys and girls. It decided to dedicate, at a minimum, an annual full-day meeting to discuss different specific themes on the rights of the child, including the identification of challenges in the realization of the rights of the child. In its resolution 25/6, the Council decided to focus its 2015 full-day discussion on the theme, "Towards better investment in the rights of the child".

2. The 2015 full-day meeting was held on 12 March, and was aimed at providing an overview of key aspects of investment in children, as well as discussing existing norms and standards and identifying key challenges in planning, mobilizing, allocating and spending public resources to realize children's rights. It also focused on applying a rights-based approach to investment in children and strengthening accountability, and on concrete examples of strategies and good practices.

3. As requested by the Council in its resolution 25/6, the Office of the High Commissioner for Human Rights prepared a report on the issue (A/HRC/28/33), in close collaboration with relevant stakeholders, including States, the United Nations Children's Fund, other relevant United Nations bodies and agencies, relevant special procedures mandate holders, regional organizations and human rights bodies, civil society, national human rights institutions and children themselves.

II. Morning panel

A. Introductory remarks and statements by panellists

4. The morning panel focused on the theme, "From rights in theory to rights in practice: overview of key aspects and challenges in planning, mobilizing, allocating and spending public resources to realize children's rights" and was moderated by the Permanent Representative of Uruguay. The panel was opened by the Director of the Research and Right to Development Division of the Office of the United Nations High Commissioner for Human Rights, followed by statements from panellists including the Investment in Children Manager at Save the Children, a member of the Committee on the Rights of the Child, the Manager of International Training at International Budget Partnership and the Chief of Public Finance and Governance at the United Nations Children's Fund.

5. Opening the session, the Director of the Research and Right to Development Division of the Office of the United Nations High Commissioner for Human Rights emphasized that one of the biggest barriers to the realization of children's rights — from the rights to life and health to the rights to adequate education and social protection — was the failure to allocate sufficient resources. Investment in children generated short-term benefits for individuals, but also resulted in long-term gains for societies. Investment in health and education were strongly correlated with economic growth, and growth in terms of human development. In contrast, failure to invest in children led to situations of chronic poverty, and not only compromised enjoyment of human rights on the basis of non-discrimination, but also challenged social cohesion, thus increasing the long-term likelihood of insecurity and conflict.

6. Article 4 of the Convention on the Rights of the Child placed an obligation on all States parties to the Convention to invest in children to the maximum extent of their available resources. That meant that children's rights must be prioritized within the State budget, and obliged States to mobilize and use available resources effectively and in the best interests of the child. However, children should not only be considered as beneficiaries of State action and programmes. They should also be empowered to be active participants in the formulation of policy and budgetary processes. That required such processes to be open, transparent and accountable, and adequate information to be provided in a child-friendly manner. In conclusion, protecting and fulfilling children's rights in practice maximized the capacity of the children of today to build a brighter future.

7. A video was presented by Plan Sweden, on behalf of members and local partners of the Working Group on Investing in Children of the non-governmental organization (NGO) Child Rights Connect. The video, entitled "Invest in Us: Children's views on budgeting for their rights", provided a snapshot of opinions and recommendations from children as part of a consultation with over 2,000 children from over 70 countries that had taken place between July 2014 and February 2015. The video called for Governments to be more accountable and transparent, and to combat corruption and embezzlement of public funds. The children said that Governments should plan well and spend money where it was needed most, but most importantly, they should listen to the views of children. Public officials should be trained on how to consult with children, and have regular consultations with children in a child-friendly manner. Documents should be simple and translated into a language that all child participants could understand. The children emphasized that listening to children could help to make budgets better and fairer.

8. The moderator, the Permanent Representative of Uruguay, Ricardo González Arenas, said that it was not a paradox, but a painful reality, that children were at the same time the future, but also one of the greatest concerns for the present. They were the hope of a better world, and also the most vulnerable group in society. Investment in the rights of the child set the basis for a fair society, a stronger economy and a world free from poverty, but was also one of the keys to ensuring a world free from war, a more tolerant society and greater solidarity. As such, investment in children was not only a legal, but a moral imperative.

9. A panellist, Investment in Children Manager at Save the Children, Bob Muchabaiwa, stated that children had a wide range of rights in principle, but unless States allocated sufficient resources in their budgets, child rights related laws and policies would remain empty promises. Public spending was the most sustainable way through which services to children could be delivered and their rights realized, and the lack of sufficient, equitable and effective investment in children was the biggest barrier to the realization of children's rights.

10. The process of investing in the rights of the child had four critical elements that were all interlinked and mutually reinforcing. First, States, irrespective of their economic circumstances, should put in place measures to mobilize sufficient public resources to invest in children, especially through progressive taxation. Second, States should ensure sufficient and equitable allocation of resources at both national and subnational levels through a process of child rights-based budgeting, based on the four guiding principles of the Convention on the Rights of the Child. In that respect, timely, comprehensive and disaggregated data were needed to inform resource planning, allocation and spending. Third, there must be effective utilization of allocated resources. That required the State to prevent inefficiencies, corruption and leakages, through ensuring open, inclusive and accountable public financial management systems. Fourth, child participation in budgetary and fiscal processes was vital. States should create formal opportunities for children and

their representatives to meaningfully participate in public budgeting and to hold duty bearers to account.

11. A member of the Committee on the Rights of the Child, Jorge Cardona, emphasized that human rights, and the rights of children in particular, could not be guaranteed at no cost, and investment was needed to render them effective. He highlighted the fact that article 4 of the Convention on the Rights of the Child drew a distinction between a general rule to adopt all appropriate measures to make rights effective, and a specific rule with regard to economic, social and cultural rights, for which measures must be adopted in so far as resources were available, within the framework of international cooperation. That meant that if a State had not fully implemented those rights, it must nevertheless show that it was using all its available resources to do so. In all circumstances, it must guarantee the essential content of the right, and undertake all efforts, nationally and internationally, to obtain sufficient resources to progressively achieve full implementation. The concept of progressivity also determined that even in situations of economic or other crisis, the principle of non-retrogression applied.

12. The Convention obliged States to adopt a child rights-based approach in the State budget, and throughout the entire budgetary cycle. The rights of the child were set out as an objective to be achieved in the design, approval, implementation, assessment and monitoring of the budget. When designing the budget, the Government must have complete and disaggregated data on the situation of children within its jurisdiction, and any future proposals must be based on those data. In addition, it must have undertaken an assessment of the implications of budgetary measures, as well as the effects of past budgets. Sufficient resources must be mobilized to invest in children, and any resources used must be sustainable over time, and not involve excessive indebtedness that would burden future generations. The way in which the funds were collected must be fair and progressive, and pay special attention to situations of vulnerability. When approving the budget, expenditure on children must be prioritized. In order to achieve a fair and inclusive budget, particular attention must be paid to children in positions of vulnerability, and the consequences on the rights of children for the entire budget must be assessed. Allocated resources must be used effectively, and information should be published on expenditure. Governments should set up public monitoring and accountability mechanisms, including the auditing of accounts. Such auditing should ensure not only that funds had been spent appropriately, but that they had been spent effectively to fulfil their objectives.

13. The Manager of International Training at International Budget Partnership, Shaamela Cassiem, stated that there was no doubt that globally, there were enough resources to invest in children and to realize their rights. There was growing evidence globally that when diverse stakeholders, including children, were included in decision-making, public funds were more likely to be equitable, efficient and effective. The first condition was to ensure access to information and participation opportunities: when ordinary people had information, skills and opportunities to participate, their engagement in government budget processes could promote substantive improvements in governance and poverty. A 2012 study by International Budget Partnership had found that more than 70 per cent of the countries surveyed did not meet the basic standards of budget transparency and accountability. That was often compounded by weak oversight of spending patterns and little opportunity for public participation.

14. Concerning recommendations, first, States should put in place policies, processes, institutions and systems that supported budget transparency to ensure equitable, efficient and effective allocations and spending to realize the rights of the child. Second, States should be encouraged to produce information and ensure that citizens had access to information on disaggregated planning, allocation and spending for all programmes that affected the rights of the child. Third, States must create and support learning environments

so that citizens, including children, could participate meaningfully in the budget. Fourth, legislatures and supreme audit institutions should designate a position with responsibility for managing public participation in fiscal policy, and particularly the participation of children. Fifth, States must provide reasons for any retrogressive measures in budget allocations and expenditures that affected investment in children and the rights of the child. Lastly, all changes to budgets and spending must have the approval of the legislature, comply by law and be made publicly available.

15. The Chief of Public Finance and Governance at the United Nations Children's Fund (UNICEF) stated that public finance was widely accepted as a key instrument for achieving economic growth and poverty reduction goals. To ensure children's rights, it was necessary to apply a deliberate child-lens to public financial decision-making. Public finance was a crucial instrument for narrowing the gaps in child rights outcomes between children at different ends of the socioeconomic spectrum. In order to invest effectively in children, there was a need to generate child-focused budget information. Without information on public financial inputs, it was difficult to assess the adequacy and efficacy of Governments' efforts in achieving child rights, which precluded the possibility of identifying remedial action. Information was central to accountability. Governance systems in which children and their advocates had access to digestible and actionable budget information and could use that information to influence budget decision-making and hold Governments to account were essential to ensuring the rights of children.

16. A recent UNICEF survey had found that in two thirds of the countries reviewed, the quality of reporting pertaining to budget allocations and/or spending on child rights might be viewed as unacceptable. However, there was evidence that the overall quality of reporting was improving over time, and an increasing number of countries had made deliberate efforts to measure, monitor and report better on child rights-related spending, with appropriate disaggregation by age and socioeconomic groups. By creating a designated space on child rights-related spending within general budget monitoring and information management systems, political commitments to the realization of child rights could be supported and become more effective in their impacts. Governments should introduce, accelerate and scale up ongoing efforts to improve budgetary reporting on the share and profile of budget allocations and spending primarily aimed at improving child rights and that had an impact on children as a group.

B. Plenary discussion

17. During the morning panel, representatives of the following States and regional organizations took the floor: the European Union, Norway on behalf of the Group of Nordic Countries, Bahrain on behalf of the Group of Arab States, Croatia (in a joint statement with Austria and Slovenia), Canada on behalf of the International Organization of la Francophonie, the United States of America, Paraguay, Togo, France, the Russian Federation, Portugal, Turkey, Nicaragua, Argentina, Spain, Albania, Brazil, Sri Lanka, Liechtenstein, Pakistan, Thailand, Nepal, Poland, Bangladesh, China, Bahrain, India, Morocco, the Republic of Korea, Singapore, Kuwait, Germany, Israel, Saudi Arabia, Mexico, Switzerland, Estonia, Slovakia and Chile.

18. In addition, the Joint United Nations Programme on HIV/AIDS, the International Development Law Organization, the Scottish Human Rights Commission, the National Human Rights Council of Morocco and the following non-governmental organizations also took the floor: Plan International, NGO Group on the Convention on the Rights of the Child, Action Canada for Population and Development, Myochikai (Arigatou Foundation) and the International Catholic Child Bureau.

1. The importance of investing in children

19. During the discussion, delegations expressed their support for the High Commissioner's report on investment in children (A/HRC/28/33), and emphasized that such investment laid the foundations for a just society, a strong economy and a world free of poverty. Delegates acknowledged that the Convention on the Rights of the Child had inspired changes in laws, institutions and policies, but that a lack of sufficient public spending was one of the main obstacles to realizing children's rights in full. They recognized that such full realization cost money, and child related laws and policies remained empty promises unless accompanied by child-sensitive, equitable and sustainable public resource mobilization, allocation and spending.

20. Several delegations noted that in making fiscal and budgetary decisions, the best interests of the child should be a primary consideration, and a child-rights assessment should be conducted of all fiscal policies, budgeting and spending. Allocations to children should be made visible to enable those inside and outside government to know how much was going to children, and to ensure that they were allocated their fair share. In that respect, it was imperative to strengthen public management and ensure accountability for resources, as well as to provide budgetary transparency.

21. It was recognized that the most successful strategies in addressing child poverty had proved to be those underpinned by policies improving the well-being of all children, applied in respect of gender equality and equal opportunities, as well as the fight against discrimination on all grounds. The realization of rights without discrimination required a political commitment to equitable budgeting, with priority being given to the most deprived and excluded children. In that respect, States emphasized that there was a need to produce comprehensive and disaggregated data to inform planning and budgeting decisions. Furthermore, in order to assess whether there was adequate investment in children, and evaluate whether programmes had been effective and efficient, it was suggested that States establish child-rights based indicators for measuring well-being on a local, regional and State-wide level. That would enable Governments to map the strengths and areas of improvement of child welfare, and to plan future interventions.

22. Corruption, in all its forms and at all levels, was highlighted as a problem by several delegations. States noted that resources needed to be spent wisely; investing effectively in children could not simply be achieved by increasing resources. States must also improve the quality of public spending through efficient management and curtailing corruption. To achieve that, dialogue and transparent processes were crucial.

23. Several States also called for the strengthening of international cooperation, stating that the obligation towards investment in the rights of the child could not be disassociated from the global economic political factors that adversely impacted a State's fiscal space and capacity to mobilize resources. In that respect, there was an urgent need for strong global partnership to tackle illicit financial flows and tax avoidance, and to enhance international cooperation through transparent and accountable global governance structures. States noted that development must be a shared responsibility of both developed and developing nations, and highlighted the need for durable and sustained global partnerships and commitments. They called for the provision of technical and financial assistance, as well as a policy space to pursue sustained and inclusive growth.

2. Participation by children in budgetary processes

24. Child participation in budgetary processes was identified as a key issue for effective investment in children. Delegates noted that children, civil society and Governments should work together to seek solutions for better budgets and spending. It was noted that initiatives to include children in budgeting, particularly at local levels, had led to important budget

shifts in favour of their rights. As such, children should participate in all steps of the budget cycle in a manner that was meaningful, inclusive, collaborative and enabling. To do that effectively, the budget process must be open, transparent, accountable and easily accessible. States must provide child-friendly information and opportunities for participation according to children's evolving capacities.

3. Investment in children in times of austerity

25. Many States highlighted the significant challenges presented by the economic crisis, and the difficulties that had produced for children in particular. Some States noted that austerity measures had disproportionately affected children, and that children were consequently more at risk of poverty and social exclusion than the rest of the population. The fact was emphasized that States had the primary responsibility to invest in children, and that regardless of income status. Governments need to mobilize sufficient domestic resources to realize children's rights.

4. Children in the post-2015 development agenda

26. A large number of States emphasized the importance of the inclusion of children's rights in the post-2015 development agenda, calling for children's best interests to be central in the design, implementation, monitoring and follow-up. They stated that it was not possible to talk about sustainable development without talking about children. Delegates noted that full and comprehensive realization of children's rights could only be achieved through sustainable, equitable and inclusive development, which should be part of a broader policy framework that included the fight against social inequality and poverty.

C. Responses and concluding remarks

27. In his responses to the discussion and concluding remarks, Mr. Muchabaiwa emphasized the importance of addressing the issue of inequality through fiscal policy; budgets should be crafted to ensure that all children could access opportunities to fully realize their rights, and no child should be left behind. When States faced a situation of economic difficulty, it was their responsibility to elevate children's issues, and to ring-fence and protect critical social sector spending to avoid retrogression. He highlighted the need for a rights-based approach to budgeting, with a result-focus; there must be a strong connection between planning and budgeting, ensuring the translation of policy commitments into positive outcomes for children. States must produce national vision documents and sector policies that were child-sensitive, costed and sufficiently reflected in governmental budgets. In that respect, there was a need for robust policies on procurement, accounting and investment measures, as well as fiscal accountability.

28. Mr. Cardona stressed the importance of disaggregated data to the implementation of child rights. He urged the United Nations to provide technical assistance, set criteria and establish indicators that would make a contribution to best practices, and to assist States to invest better in the rights of children. He emphasized that there was a need for greater cooperation in an inter-State setting, and with international bodies, in order to ensure children's rights.

29. Ms. Cassiem said that States already produced a lot of information with regard to budgets, but they must now release that information to the public. She suggested that Governments should provide in-year, mid-year and end-of-year reports, so that spending could be monitored continuously. Citizens' budgets should be produced to show budgetary allocations and service provision targets in a manner that was accessible and usable.

30. Ms. Chai argued that to make the sustainable development goals meaningful and cost-effective, the child rights agenda should be included in all discussions. She pointed out that States already had a number of instruments that could be used to assess the impact of policies and public spending, but they could be strengthened. Similarly, the capacity of Parliaments to exercise their overview functions over budgets and spending could be strengthened, and public expenditure reviews could be used more consistently and with a greater child focus. More frequent use should also be made of auditing services by supreme audit agencies. In conclusion, she advocated making the voices of children and citizens much more powerful to ensure appropriate spending on children's rights.

III. Afternoon panel

A. Introductory remarks and statements by panellists

31. The afternoon session focused on applying a rights-based approach to investment in children and strengthening accountability, and on concrete examples of strategies and good practices. The Permanent Representative of the European Union to the United Nations Office at Geneva, Peter Sorensen, moderated the panel, with opening statements by the Vice-President of the Human Rights Council, speaking on behalf of the President, and the Special Adviser of the Secretary-General on Post-2015 Development Planning. Presentations were made by the Global Adviser for Citizenship and Governance at Plan International; the Director of the Masters Programme in Social Investment Management, Universidad del Pacífico, and Executive Director of the Peruvian University Consortium; the Chair-Elect of the European Network of Ombudspersons for Children and the Ombudsman for Children of the Netherlands; and the Head of the African Child Observatory of the African Child Policy Forum.

32. In her opening statement, the Special Adviser of the Secretary-General on Post-2015 Development Planning recognized the need for a holistic and integrated development agenda that went beyond social issues to include peaceful societies, rule of law and economic prosperity, and to ensure the protection of the rights of the child. She noted that issues such as climate change, governance, peace and security and development were all intertwined, and could not be separated from the rights of children. She emphasized that safe, healthy and well-nourished children were at the heart of sustainable development, and the post-2015 development agenda must address that. The relationship between children and sustainable development was symbiotic: sustainable development underpinned children's rights and conversely, children's rights and well-being underpinned lasting and equitable development.

33. Any goals or targets named in the post-2015 development agenda must be operationalized at the country level, and include an integrated finance strategy. Budgets to achieve those goals must be sustainable and prioritize the rights of children. The goals must be achieved through combined action across sectors: States would need to transcend fragmentation and competition among sectors, and view development as a multidimensional and integrated issue.

34. The Global Adviser for Citizenship and Governance at Plan International, Stephanie Conrad, provided examples of cases in which child participation in budgeting processes had already been implemented and had proved a great success. In Recife, Brazil, children from over 200 schools provided annual inputs into city budgets and as a result, Recife had within a decade redirected over $300 million of public expenditure, based on citizens' feedback. In Munich, Germany, children were members of city district councils and decided together with adults on investments to improve city life; the city also dedicated specific budget lines

to help implement and kick-start priority issues raised by children. In Opatija, Croatia, children decided on the budget of the city children's council and made recommendations on how the adult city council should spend its money.

35. Civil society organizations also had experience of working with children in budgetary processes. Plan International in Ghana supported children and young people at district level and trained them on how to analyse budgets and monitor expenditures. They compared district budget plans with the priority needs identified by the surveyed population. In meetings with local district authorities, they shared their findings and negotiated hard for better budget allocations. In Kenya, Plan International supported a local youth and governance consortium to convince community members and government officials to look at how well decentralized government funds were spent in the district. Young people and adults were trained and assessed the cost-effectiveness and quality of schools, health centres and water services. The young people discussed the results with local government representatives, after which there were public hearings to agree on measures to address shortcomings.

36. Three principles were essential to ensure the effective participation of children. First, participation had to be meaningful, practical and adapted to children's evolving capacities. Second, participation must be inclusive, giving the most vulnerable children the opportunity to have their say. Third, participation worked best when it was collaborative; initiatives in which young people and government officials worked together had been proven to generate faster and more sustainable results.

37. The Director of the Masters Programme in Social Investment Management at the Universidad del Pacífico, and Executive Director of the Peruvian University Consortium, Enrique Vásquez, set out key challenges to investing in children. He noted the need to raise the profile and visibility of children. Children living in poverty or in rural areas and children who belonged to minority ethnic groups needed to be more visible in official statistics. Unless disaggregated data were available, it was impossible to quantify the impact of social spending on children, but equally States could not determine how much money was needed to fully implement children's rights. Budgets for children had to be protected, especially in times of economic crisis and austerity. It was also important to mobilize resources to make children's rights effective. In situations of financial uncertainty, it was vital that Governments improved taxation and fiscal policies to provide the necessary funds to realize children's rights.

38. It was important that children participated in defining budgetary priorities. That already happened in many countries in Latin America, but there was a need for more participatory spaces at the local level. States must ensure that children were able to use participatory spaces to influence budget allocation and monitoring properly. There was a real need for results-based budgets. There must be clear links between the goals to be achieved, the policy to implement them and the investment needed to achieve them.

39. The Chair-Elect of the European Network of Ombudspersons for Children, and the Ombudsman for Children of the Netherlands, Marc Dullaert, noted the grave effect the economic crises had had on the realization of children's rights in Europe, through the implementation of common post-crises austerity measures, including cuts in social services and social protection. Social spending cuts had inevitably impacted heavily on children, who were particularly dependent on social programmes and services. Resource constraints were no excuse for violations of civil and political rights, nor did they justify discrimination or a failure to ensure that different groups of children and youths enjoyed equal rights.

40. States should establish children's budgets, which entailed identifying and analysing resources for children in national and subnational budgets so as to prioritise the needs, rights and best interests of children. Moreover, the Council of Europe Strategy for the

Rights of the Child should include a focus on child poverty and the ongoing effects of the crises, as should the successor to the European Union Agenda for the Rights of the Child. All European States should prepare and adopt a national comprehensive strategic plan to combat child poverty and social exclusion, which should have a timetable, quantifiable goals, reliable disaggregated data on children and an implementation and monitoring mechanism.

41. The Head of the African Child Observatory of the African Child Policy Forum, Yehualashet Mekonen, stated that Africa had made commendable achievements in the child rights arena, with a recent study showing a growing commitment and improved performance of African Governments in realizing the rights of children. Those positive developments had paid off and, more than ever, there had been a remarkable reduction in child mortality in Africa and improvement in children's access to essential services such as health care, education, nutrition and clean drinking water. However, millions of children in Africa still faced numerous challenges on a daily basis. Investment in children was not commensurate with the huge magnitude of the deprivation that children, particularly the most vulnerable groups, were facing in the African region.

42. Today's investment in children was tomorrow's sustainable development. However, that would not materialize without investing in children's physical and cognitive development through integrated programmes that improved their nutritional status, ensured access to early childhood development services and provided adequate protection from harm and exploitation. Furthermore, today's investment in children was tomorrow's peace, stability, security and democracy. However, that would not happen if enough was not invested in systems and functional mechanisms that ensured children's involvement in decisions that affected them at all stages of their growth and development and in line with their evolving capacities.

B. Plenary discussion

43. During the afternoon panel, representatives of the following States took the floor: Ecuador on behalf of the Community of Latin American and Caribbean States, Cuba, Colombia, Bulgaria, Monaco, Algeria, Kazakhstan, Angola, Bahrain, Qatar, Sierra Leone, Sudan, Australia, Malaysia, Ghana, Indonesia, Egypt, Montenegro and Maldives. Representatives of Save the Children, Redlamyc, Alsalam Foundation, the World Organisation Against Torture, Defence for Children International, Südwind – Association for Educational and Advocacy Activities Related to Development Policy, the World Jewish Congress, the World Environment and Resources Council, Human Rights Advocates and Drepavic also took the floor.

44. During the interactive dialogue, States again noted that, apart from being a legal obligation, investment also brought with it economic and social benefits for current and future generations. However, investment must be made in children because it was their right, irrespective of the associated development gains. Although it was recognized that States must bear the primary responsibility for investment in children, the role of the private sector and businesses to act responsibly and promote and protect children's rights was also highlighted. In particular, States noted the need for public and private alliances to develop projects that would have a large impact at the national and regional levels. The role of civil society was also mentioned, particularly when it came to monitoring policies and promoting and enabling the participation of children in budgetary processes.

45. Delegates emphasized that social investment must be protected and prioritized, even when a country was facing an economic crisis. Retrogressive measures should not be taken without due justification. The importance of impact assessment of policies and budgetary allocations was also noted, as was the importance of rights-based tracking of public

budgeting for children. While many States highlighted their own policies in relation to children's health, education and social protection, there was also recognition that investment in children could not be focused purely on traditionally child-focused sectors and must cut across all areas.

46. Many States expressed concern that the benefits of development were not reaching the most vulnerable. In that respect, the lack of data collection was identified as a key challenge in identifying the different areas in which children's needs were not being met, and recognized that improvement in that area was essential. Delegates recommended that Governments ensure comprehensive budget planning, allocation and spending processes that prioritized investments benefiting families on the lowest incomes and their children.

1. Obstacles to effective investment in children

47. Many States discussed potential obstacles to effective investment in children. States highlighted the need for the fight against corruption at all levels of public spending to be treated as a priority, as corruption could drastically reduce the funds available to invest in children. The absence of accountability and judicial recourse was also identified as playing a role in the misappropriation of funds, and delegates noted the need to continuously strengthen the rule of law and consolidate democracy.

48. The mobilization of domestic revenues, especially from taxation, was identified as particularly important and was described as the most significant and sustainable source of revenue for Governments to finance public spending on children. Governments were urged to establish equitable, effective and progressive tax systems in which the highest burden was placed on those most able to pay, not those with the least resources. The consequences of tax evasion on the fulfilment of the rights of children was also highlighted, and States urged Governments to act to combat that phenomenon.

49. Many States underscored the fact that the realization of children's rights was a responsibility shared between developed and developing countries. It was noted that the universalization of international instruments on the protection of children should be combined with the universalization of the capacity to fulfil the obligation emanating from those instruments, including through international cooperation. Delegates also noted the impact that global events had on States' ability to invest effectively in children. The impact of the global economic environment on the fiscal capacity of States was highlighted, as were the impact of climate change, the outflow of illicit funds, the outbreak of epidemics and armed conflict.

2. Role of the United Nations

50. Many delegates called for examples of good practice to be compiled, so that States could learn from the experiences of others. They also recommended that the rights of children should be considered in all discussions in the Human Rights Council; when the Council discussed, inter alia, climate change, foreign debt, cultural rights, religious tolerance and increased participation, it should explicitly identify the long- and short-term impacts on the rights of children and investment in children.

C. Responses and concluding remarks

51. In her responses to delegates' questions and concluding remarks, the Special Adviser of the Secretary-General on Post-2015 Development Planning emphasized the importance of a multisectoral approach to the new sustainable development goals. That would be different from previous approaches, which had taken a vertical approach, and would involve the whole of Government in the horizontal implementation of the goals.

New skill sets, new partnerships and new players were needed to implement the post-2015 development agenda. In particular, business would play a vital role. While in the past, businesses had not always acted in the interests of children, that could be rectified; it was possible to make a profit while protecting children, society and the environment.

52. The Special Adviser urged States to engage more deeply with the evolving development process. They should consider the implications of the sustainable development agenda through the 17 goals, putting children's rights at the centre of their analysis. The collection of data and the efficacy of indicators would rely on how much investment was made in institutions at the country level. The data could not simply be collected as a one-off event, but must be part of a continuous and ongoing process. Children must be able to engage with development negotiations and all declarations and instruments should be written in a way that children could understand and to which they could respond.

53. Ms. Conrad noted that, while more money was needed to fully realize children's rights, how that money was used, and whether it was invested in an effective and efficient manner was equally important. She suggested that children should be brought in to monitor how money was spent. That could be done at the level of services — when children accessed health care, education and water — and it would provide a useful opportunity for them to give feedback about how they experienced those services and the quality of them. She advocated the establishment of youth parliaments and child ombudspersons as crucial opportunities to help children contribute to budget monitoring, but also highlighted the importance of education to provide young people with the skills and attributes to be able to actively participate in the process and to exercise their citizenship.

54. The Millennium Development Goals had made a major contribution to implementing the rights of the child, and the sustainable development goals would continue that quest. The goals aimed to ensure that no-one was left behind and to provide for the sustainable use of resources to ensure that not only the current generation, but also future generations, could continue to enjoy their rights. In order to be able to do that, Governments must collect data to establish the profile of vulnerability within their own country. Policies that targeted the broad majority were rarely able to reach those who were most marginalized and most at risk of being left behind. In the budgeting and planning process for the implementation of the sustainable development goals at country level, Governments must engage with young people and other potentially vulnerable groups to understand how their needs could best be met and their rights ensured. In the process of defining the sustainable development goals, one of the key messages that had been heard from young people had been the need for transparent governance, and governance that allowed young people to participate.

55. Mr. Vásquez stated that, in order to invest in children, States must identify the needs of children and raise their profile. In order to do that, they needed to ensure that all children were provided with an identity, and that institutional capacity was improved to enable the collection of accurate and up-to-date statistical information. It was only with that information that the vulnerabilities of children could be identified, and the best way of targeting those populations determined. That information would also ensure that the impact of investment in children could be accurately monitored and assessed; with good information, States could quantify what was being done, how goals were being achieved and what resources needed to be invested.

56. He emphasized the need to increase the availability of resources and improve how funds were spent. To do so, States must improve their taxation systems and fiscal policies. A rights-based approach to taxation required three steps: planning, implementing and monitoring. At the planning stage, all States must implement progressive taxation, with those on a higher income contributing more resources. In implementing the taxation system, Governments needed to combat corruption, which stripped away resources that

could be devoted to children. Tax evasion must also be addressed, as it limited the financial capacity of States. He also emphasized the importance of international cooperation to monitor taxation and to ensure that Governments were able to develop information systems to ensure that the tax burden was not placed on the most vulnerable. The development of a sound fiscal policy that made the best use of the mobilized resources required disaggregated information, but also the improvement of the technical, moral and ethical capacities of civil servants. Results-based budgets, on which public institutions worked together towards a single goal, were also important.

57. In response to a query as to the role of ombudspersons in helping achieve better investment in children, Mr. Dullaert explained that they could collect data, influence budget processes and advocate for children's participation. All States should establish a children's budget that allocated resources to children, both at the national and subnational or regional levels. Children had a lot of value to add in those processes if they were really listened to, and their participation should be ensured. There was broad agreement that investment in children was necessary and urgent; States should not to wait to invest in children, or there would be a lost generation.

58. Mr. Mekonen stated that a failure to invest in children at the current time would cost many times over in economic, social and political terms in the future. Investment in children often relied on external sources in developing nations, in the form of development assistance and external investment. As a result, investment in children had decreased in many countries following the economic crisis. Furthermore, planning and budgeting for children was not always based on evidence. Without a comprehensive assessment of the situation of children in a country, there was no way of determining where funds were needed. Policies must be based on evidence that clearly showed the gaps to be filled, and the disparities in national development. Gaps were visible between policymaking and budgeting — those areas must work together and coordinate so that all policies were supported by accurate budgets. That lack of coordination often extended to implementing agencies, which did not communicate or exchange information. That was a missed opportunity to enhance the efficiency of the implementation process, and could save resources and enhance the effectiveness of interventions.

59. There was a need for a multisectoral and integrated approach to ensure effective investment. That required a shift in thinking from the current approach that viewed investment in children as arising in relation to only a few, specific sectors. In order to make the shift, he recommended that Governments share their experiences, document good practice and facilitate learning to ensure knowledge transfer. Although most countries recognized the significance of investment and made efforts to invest, it was clear that currently, States were not doing enough to invest in the rights of the child.

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Agenda item 3
Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Ways and means, as well as obstacles and challenges and proposals to overcome them, for the enhancement of international cooperation in the United Nations human rights machinery, including the Human Rights Council*

Note by the Secretariat

1. In its resolution 28/2, the Human Rights Council requested the United Nations High Commissioner for Human Rights to prepare, in consultation with States, and taking into account the discussions conducted by the high-level panel on human rights mainstreaming held during the twenty-eighth session of the Council with the theme of "Enhancement of international cooperation in the field of human rights", a report on the ways and means, as well as obstacles and challenges and proposals to overcome them, for the enhancement of international cooperation in the United Nations human rights machinery, including the Council, and to submit it to the Council before its thirtieth session.

2. For technical reasons, the above-mentioned report will be submitted to the Human Rights Council at its thirty-first session.

* Late submission.

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